

**DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS,
LACKLAND HILLS JOINT VENTURE, and
BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER THIRTEEN,
CITY OF SAN ANTONIO, TEXAS**

March 4th, 2005

This Development Agreement ("Agreement"), pursuant to Ordinance No. ²⁰⁰⁶⁻⁰¹⁻19-0095, effective as of January 29, 2006, is entered into by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation in Bexar County, Texas (hereinafter called "**CITY**"); **LACKLAND HILLS JOINT VENTURE**, an entity organized in the State of Texas (hereinafter referred to as "**DEVELOPER**"); and the **BOARD OF DIRECTORS FOR REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF SAN ANTONIO, TEXAS**, a tax increment financing zone (hereinafter called "**BOARD**");

WITNESSETH:

WHEREAS, **CITY** recognizes the importance of its continued role in economic development, community development, planning, and urban design; and

WHEREAS, by Ordinance Number 95055, dated December 13, 2001, pursuant to Chapter 311 of the Texas Tax Code (as amended), (hereinafter called the "Act"), **CITY** created Reinvestment Zone Number Thirteen ("Zone") in accordance with the Act, to promote development and redevelopment of the Zone Property through the use of tax increment financing, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future and established a Board of Directors for the Zone; and

WHEREAS, Section 311.002(1) of the Act authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds, for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality establishing a reinvestment zone, for costs of public works or public improvements in the zone, plus other costs incidental to those expenditures and obligations, consistent with the project plan of the reinvestment zone, which expenditures and monetary obligations constitute project costs, as defined in the Act ("Project Costs"); and

WHEREAS, on November 22, 2005, by a Board Resolution, the Board adopted and approved a Final Project Plan and a Final Financing Plan defined hereunder and referred to herein as "Project Plan" and "Financing Plan" providing for development of Zone Property; and

WHEREAS, **CITY** approved the Project Plan and Financing Plan for Zone by Ordinance Number 2006-01-19-0095, on January 19, 2006; and

WHEREAS, pursuant to the Act and **CITY** Ordinance Number 95055, dated December, 13, 2001, the **BOARD** has authority to enter into agreements as the **BOARD** considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the Zone Property; and

WHEREAS, pursuant to said authority above, the **BOARD**, **CITY** and **DEVELOPER** for **DEVELOPER** each hereby enters into a binding agreement with the others to develop and/or redevelop the Zone Property as specified in the Project Plan, Financing Plan and this Agreement; and

WHEREAS, **CITY**, by Ordinance Number ^{2006.01.} 19-0095, dated January 19, 200⁶~~3~~, authorized the City Manager or her designated representative to execute this Agreement on behalf of **CITY**, to bind **CITY** to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, **CITY**, **BOARD**, and **DEVELOPER** hereby agree as follows:

I. DEFINITIONS

- 1.1 "CITY," "BOARD," and "DEVELOPER" shall have the meanings specified above.
- 1.2 "Act" means the Tax Increment Financing Act, as defined above and as may be amended from time to time.
- 1.3 "Agreement" means this document by and among **CITY**, **BOARD** and **DEVELOPER**, which may be amended from time to time, pursuant to the provisions contained herein.
- 1.4 "Available Tax Increment Funds" for each Participating Taxing Entity means the "Tax Increment" contributed by each Participating Taxing Entity as defined in Section 311.012 (a) of the Act to the fund established and maintained by **CITY** for the purposes of implementing the projects of the Zone, less the initial administrative costs of each Participating Taxing Entity for organizing the Zone and the ongoing administrative costs of **CITY** for managing the Zone, and those annual administrative fees, if any, of the participating taxing entities.
- 1.5 "City Manager" means the City Manager of **CITY** or his designee.
- 1.6 "Completion" means construction of a public improvement in Zone substantially in accordance with the Project Plan, Financing Plan and this Agreement to the extent that the particular improvement can be used and maintained for its intended purpose, as certified by an engineer or other official of **CITY** with responsibility for inspecting and certifying such improvements.
- 1.7 "Contract Progress Payment Request" ("CPPR") means a request, prepared in accordance with the requirements of Exhibit E, attached hereto and incorporated herein for all purposes, for payment due to **DEVELOPER** for work completed in accordance with Section 1.6 above on a specific improvement in the Zone in accordance with the Project Plan and the timeline detailed in Exhibit B, the Construction Schedule. The CPPR shall also reflect all waivers granted through the Incentive Scorecard System.
- 1.8 "CPPR Approval" means a written acknowledgement from **CITY** to **DEVELOPER** that the Contract Progress Payment Request, as defined herein, was completed and submitted correctly, and that the Contract Progress Payment Request is ready for presentation to **BOARD** for approval and consideration for reimbursement to **DEVELOPER**.
- 1.9 "Construction Schedule" means the timetable for constructing the improvements specified in the Project Plan, Financing Plan and this Agreement, which timetable is more particularly set forth in Exhibit

B, attached hereto and incorporated herein for all purposes and which timetable may be amended from time to time pursuant to the provisions of this Agreement.

1.10 "Effective Date" means the tenth (10th) day after passage by the **CITY's** City Council of the Ordinance authorizing the execution of this Agreement by **CITY**.

1.11 "Financing Plan" means the final Financing Plan as defined in the Act, as approved and as may be amended from time to time by **BOARD** and **CITY**, attached hereto and incorporated herein for all purposes as Exhibit A.

1.12 "Guidelines" means the Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria as passed and approved by City Council of the City of San Antonio, in effect at the time of the creation of the Zone.

1.13 "Phase" means a portion of the Project that is being constructed by **DEVELOPER**, normally being a set number of units or acres out of the Zone Property being constructed together during a specific timeline.

1.14 "Participating Taxing Entity" means any governmental entity recognized as such by Texas law that is participating in this Project by contributing a percentage of the tax increment derived from the ad valorem property taxes levied on Zone property by that governmental entity.

1.15 "Project" has the meaning specified in paragraph 3.1 of this Agreement, and as more specifically detailed in the Project Plan and Financing Plan as (either or both) may be amended from time to time.

1.16 "Project Costs" has the meaning specified above on page 1, as provided by Section 311.002(1) of the Act, and the Guidelines in effect at the time Zone was designated.

1.17 "Project Plan" means the final Project Plan as defined in the Act, as approved and as may be amended from time to time by **BOARD** and **CITY**, attached hereto and incorporated herein as Exhibit A.

1.18 "Public Infrastructure Improvements" include those improvements listed in Paragraph 3.2 of this Agreement, and as more specifically detailed in Exhibit A, as may be amended from time to time.

1.19 "Quarterly Report" means a report, prepared and submitted by **DEVELOPER** in accordance with the requirements of Exhibit C attached hereto and incorporated herein for all purposes, which provides quarterly updates of Project construction.

1.20 "TIF Unit" means the division of **CITY's** Neighborhood Action Department responsible for the management of **CITY's** TIF Program.

1.21 "Zone" means Reinvestment Zone Number Thirteen, City of San Antonio, Texas.

1.22 "Zone Property" means the contiguous geographic area of **CITY** that is included in the boundaries of Zone, which are more particularly described in Exhibit A.

Singular and Plural: Words used herein in the singular, where the context so permits, also includes the plural and vice versa, unless otherwise specified.

II. REPRESENTATIONS

2.1 **NO TAX INCREMENT BONDS OR NOTES:** **CITY, BOARD, and DEVELOPER** represent that they understand and agree that neither **CITY** nor **BOARD** shall issue any bonds or notes to cover any costs directly or indirectly related to **DEVELOPER's** improvement of the Zone under this Agreement.

2.2 **CITY** represents to **DEVELOPER** that as of the date hereof **CITY** is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.

2.3 **BOARD** represents to **DEVELOPER** that as of the date hereof that the Zone is a Tax Increment Reinvestment Zone established by **CITY** pursuant to Ordinance Number 95055, passed and approved on December 13, 2001, and has authority to carry on the functions and operations contemplated by this Agreement.

2.4 **DEVELOPER** represents to **CITY** and to **BOARD** that **DEVELOPER** is an entity organized in the State of Texas; that **DEVELOPER** has the authority to enter into this Agreement and to perform the requirements of this Agreement; that **DEVELOPER's** performance under this Agreement shall not violate any applicable judgment, order, law or regulation; that **DEVELOPER's** performance under this Agreement shall not result in the creation of any claim against **CITY** for money or performance, any lien, charge, encumbrance or security interest upon any asset of **CITY** or **BOARD**; that **DEVELOPER** shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital; and that **DEVELOPER** owned the Zone Property at the time the Zone was created.

2.5 **CITY, BOARD, and DEVELOPER** represent each to the others that the execution, delivery, and performance of this Agreement on its part does not require consent or approval of any person that has not been obtained.

2.6 **CITY and BOARD** represent that **DEVELOPER** may rely upon the payments to be made to it out of the Available Tax Increment Funds as specified in this Agreement and that **DEVELOPER** may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement, but **DEVELOPER's** right to such payments is subject to the other limitations of this Agreement. Notwithstanding the forgoing, **CITY** shall issue a check or other form of payment made payable only to **DEVELOPER**.

2.7 **CITY, BOARD, and DEVELOPER** represent each to the others that it shall make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires its continued cooperation.

2.8 **CITY, BOARD, and DEVELOPER** represent that they understand and agree that even after the Zone terminates, **DEVELOPER** shall diligently work to successfully complete any and all required improvements that are not completed before Zone terminates. Such completion shall be at no additional cost to **CITY, BOARD, or any other Participating Taxing Entity**.

2.9 **CITY, BOARD, and DEVELOPER** represent that they understand and agree that this Agreement shall have no force or effect unless and until the applicable Interlocal Agreements for the Project are executed among **CITY**, the respective Participating Taxing Entities and **BOARD**.

2.10 **DEVELOPER** represents that it understands that any contributions made by **DEVELOPER** in anticipation of reimbursement from tax increments shall not be, nor construed to be, financial obligations of **CITY**, or other Participating Taxing Entity, or **BOARD**. **DEVELOPER** shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of tax increment, changes in tax rates or tax collections, changes in state law or interpretations thereof, changes in market or economic conditions impacting the project, changes in interest rates or capital markets, changes in development code requirements, default by tenants, unanticipated effects covered under legal doctrine of *force majeure*, and/or other unanticipated factors.

III. THE PROJECT

3.1 **The Project.** The Project shall constitute and include the design, construction, assembly, installation and implementation of an urban residential development with approximately 184 single-family homes, site work, drainage, streets and approaches, sewer, water, electric, streetlights, platting fees, and water impact fees, to be constructed by **DEVELOPER** on an approximately 39.006 acre tract of land also known as the Lackland Hills Subdivision.

3.2 **The Public Infrastructure Improvements.** The Public Infrastructure Improvements shall consist of the following items: site work, drainage, streets and approaches, sewer, water, electric, streetlights, platting fees, and water impact fees and other public improvements authorized by the Act and the Guidelines in effect at the time Zone was created. The Public Infrastructure Improvements are more particularly set forth in the Project Plan and Finance Plan, attached hereto and incorporated herein for all purposes as Exhibit A.

3.3 **Construction of Public Infrastructure Improvements.** Public Infrastructure Improvements financed through Available Tax Increment Funds shall be competitively bid in compliance with Chapter 252 of the Local Government Code, pay prevailing wages in accordance with Ordinance No. 71312, passed and approved on March 29th, 1990, attached hereto as Exhibit D, and be constructed by or on behalf of **DEVELOPER**, in compliance with all applicable law *unless*: (1) Available Tax Increments Funds go toward financing 30 percent or less of the cost for a specific public improvement, in compliance with Chapter 212 of the Local Government Code; and (2) such public improvement is not a building of any sort. Should **DEVELOPER** not publicly bid a Public Infrastructure Improvement, **DEVELOPER** must obtain written approval by **CITY** in order to be eligible for partial reimbursement of those Project Costs not publicly bid pursuant to the regulations set forth in Chapters 252 and 212 of the Local Government Code. Partial reimbursements to **DEVELOPER** in that event shall not exceed thirty percent (30%) of the Project Costs that would otherwise have been eligible for total reimbursements had they been competitively bid.

3.4 **Financing.** The cost of the Public Infrastructure Improvements and all other improvement expenses associated with the Project shall be through the use of **DEVELOPER's** own capital or through commercial or private construction loans/lines of credit secured solely by **DEVELOPER**. **DEVELOPER** may use any or part of the Zone Property as collateral for the construction loan or loans as required for the financing of the Project; however, no property with a lien still attached may be offered

to **CITY** for dedication. **CITY** and **BOARD** pledge to use Available Tax Increment Funds, up to the maximum amount provided herein, to reimburse **DEVELOPER** for Project Costs it has expended. **THESE AVAILABLE TAX INCREMENT FUND PAYMENTS MADE TO DEVELOPER ARE NOT INTENDED TO REIMBURSE DEVELOPER FOR ALL OF ITS COSTS INCURRED IN CONNECTION WITH PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.**

3.5 **Reimbursement.** The parties hereto agree that neither **CITY** nor **BOARD** can guarantee that those available Tax Increment Funds shall completely reimburse **DEVELOPER**, but that those Available Tax Increment Funds shall constitute the total reimbursement to **DEVELOPER** for the construction of the eligible Public Infrastructure Improvements.

IV. TERM

4.1 The term of this Agreement shall commence on the Effective Date and end on the date which is the earlier to occur of the following: (i) the date **DEVELOPER** receives the final payment for completing the Project; or (ii) the date this Agreement is terminated as provided in Article IX; provided that all existing warranties on the Project shall survive termination of this Agreement; or (iii) the date the term of the Zone expires.

V. DUTIES AND OBLIGATIONS OF DEVELOPER

5.1 **DEVELOPER** shall comply with all applicable provisions of the Guidelines. In the event of a conflict between the Guidelines and this Agreement, the terms of this Agreement shall control.

5.2 Subject to Article VII. Compensation to Developer, **DEVELOPER** agrees to complete, or cause to be completed, the improvements described in the Project Plan, Financing Plan and in this Agreement. **DEVELOPER** agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. **DEVELOPER** also agrees to obtain or cause to be obtained, all necessary permits and approvals from **CITY** and/or all other governmental agencies having jurisdiction over the construction of improvements to the Zone Property.

5.3 **DEVELOPER** shall prepare, or cause to be prepared plans and specifications for the Public Infrastructure Improvements in a Phase prior to starting any construction in said Phase. **DEVELOPER** shall not commence any construction on the Project until the plans and specifications for a Phase have been approved in writing by the appropriate department of **CITY**. For purposes of this Section, letters of certification or acceptance issued by the **CITY** shall constitute written approval of the **CITY**.

5.4 **DEVELOPER** shall, prior to beginning construction on any Phase of the Project, cause its general contractor or general contractors to obtain a payment and performance bond in an amount sufficient to cover completion of the Public Infrastructure Improvements for that phase in their respective contracts. **DEVELOPER** shall obtain said bond in the event the general contractor or general contractors fail to procure said bond. **DEVELOPER** shall submit evidence of payment and performance bonds as a condition of eligibility for reimbursement pursuant to the requirements of the CPPR.

5.5 **DEVELOPER** agrees to supervise the construction of the Project and cause the construction to be performed substantially in accordance with the Project Plan, Financing Plan and the plans and specifications approved by the appropriate department of **CITY** and **BOARD**. **DEVELOPER** also agrees to provide periodic reports of such construction to **CITY** and to **BOARD** upon reasonable

request.

5.6 **DEVELOPER** shall be responsible for paying, or causing to be paid, to **CITY** and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project.

5.7 **DEVELOPER** agrees to commence and complete the Project in accordance with the Construction Schedule. If substantial completion of the Project is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond **DEVELOPER's** control, then at **CITY's** reasonable discretion, the deadlines set forth in the Construction Schedule may be extended by the period of each such delay.

5.8 With respect to Public Infrastructure Improvements, **DEVELOPER** shall make a good faith effort to comply with **CITY's** policy regarding the participation of businesses enterprises eligible as Small, Minority or Women-owned Business Enterprises in subcontracting any of the construction work required to be performed under the Project Plan, Financing Plan or this Agreement. A list of those business enterprises certified by **CITY** as eligible Small, Minority or Women-owned Business Enterprises is available from **CITY**. **DEVELOPER** shall maintain records showing (i) its contracts, supply agreements, and services agreements with and to business enterprises that are Small, Minority or Women-owned Business Enterprises, (ii) specify its efforts to identify and award contracts to business enterprises that are Small, Minority or Women-owned Business Enterprises, and (iii) provide reports of its efforts under this paragraph to **CITY**, in a form and manner **CITY** may reasonably prescribe, at least annually during construction of the Project and upon completion of the Project.

5.9 **DEVELOPER** shall comply with the tree preservation ordinance, City of San Antonio Ordinance No. 85262, passed and approved by the City Council of **CITY** on December 5, 1996, and as amended by Ordinance No. 97332, passed and approved by the City Council on March 13, 2003.

5.10 **DEVELOPER** shall render, or cause to be rendered, any and all residential buildings and commercial buildings to the Bexar County Appraisal District before December 31 of each year of this Agreement if the buildings were completed prior to said December 31.

5.11 **DEVELOPER** shall, at its own cost and expense, maintain or cause to be maintained, the Public Infrastructure Improvements and all the other public improvements until acceptance by **CITY**, as evidenced by written acceptance by the appropriate **CITY** administrator, and for one (1) year thereafter. After the expiration of one (1) year after such acceptance, maintenance of the Public Infrastructure Improvements shall be the responsibility of **CITY**. **DEVELOPER**, its agents, employees, and contractors will not interfere with reasonable use of all the Public Infrastructure Improvements by the general public, except for drainage retention improvements. In accordance with the Construction Schedule, **DEVELOPER** shall dedicate the Public Infrastructure Improvements to the appropriate Participating Taxing Entity (as determined by **CITY**), at no additional cost or expense to **CITY** or any other Participating Taxing Entity within sixty (60) days after completion and acceptance of the improvements.

5.12 **DEVELOPER** shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by **DEVELOPER** in regard to the development of the Zone Property for all areas owned by **DEVELOPER** during construction of the Project, and for so long as **DEVELOPER** owns those areas. Projects within the Zone shall be subject to Section 35.501 et seq. of

the San Antonio City Code and **DEVELOPER** shall not be prohibited from applying for the benefits of any impact fee credits allowed by that Section.

5.13 **DEVELOPER** shall cooperate with **CITY** and **BOARD** in providing all necessary information to **CITY** and to **BOARD** in order to assist **CITY** and **BOARD** in complying with this Agreement

5.14 **DEVELOPER** shall submit written annual reports, starting no later than thirty (30) days following the end of the fiscal year in which the Zone was created, and thereafter through the duration of the Project, on its construction progress and construction expenses to **CITY** and **BOARD**.

5.15. **DEVELOPER** shall complete any and all required improvements not completed before the Zone terminates. Such completion shall be at no additional cost to **CITY**, **BOARD**, or any other Participating Taxing Entity.

5.16 For all applications for building permits submitted after November 3, 2002, **DEVELOPER** shall comply or cause its contractors to comply with **CITY**'s Universal Design Policy, located in the City Code of San Antonio, Texas, Chapter 6, Article XII, Section 6-301, as amended by Ordinance No. 96621, passed and approved on October 24, 2002. In the event **DEVELOPER** does not construct the single family homes, duplexes or triplexes in Zone, **DEVELOPER** shall cause all documents conveying title to the lots developed by **DEVELOPER** to reflect the buyer's consent to comply with **CITY**'s Universal Design Policy when constructing or causing to be constructed single family homes, duplexes or triplexes on said lots in Zone.

5.17 **DEVELOPER** shall comply with Chapter 35-504 and Appendix F of the City of San Antonio Unified Development Code regarding the development of the Project.

5.18 **DEVELOPER** understands that no Available Tax Increment Funds will be paid to Developer until a master drainage plan of the Project has been received and approved by **CITY**. Said approval shall not be unreasonably withheld if **DEVELOPER** has complied with all existing **CITY** written and adopted rules and ordinances.

VI. DUTIES AND OBLIGATIONS OF CITY AND BOARD

6.1 Neither **CITY** nor **BOARD** shall sell or issue any bonds to pay or reimburse **DEVELOPER** or any third party for any improvements to the Zone Property performed under the Project Plan, Financing Plan or this Agreement.

6.2 **CITY** and **BOARD** hereby pledge all Available Tax Increment Funds as full reimbursement to **DEVELOPER**, up to the maximum total amount specified in this Agreement.

6.3 **CITY** and **BOARD** hereby agree that all meetings of **BOARD** shall be coordinated through and facilitated by the department of **CITY** responsible for managing the TIF Program and that all notices for meetings of **BOARD** shall be drafted and posted by **CITY** staff, following the written request by **BOARD**, pursuant to the terms of Chapter 2, Article VIII, entitled "Boards and Commissions" of the City Code of **CITY**, as approved by **CITY**'s City Council by Ordinance No. 100199, passed and approved on December 16, 2004 and amended by Ordinance No. 101119 on July 14, 2005.

6.4 **CITY** and **BOARD** shall use their respective best efforts to cause each Participating Taxing Entity that levies real property taxes in Zone to levy and collect their ad valorem taxes due on the Zone Property and to contribute the Available Tax Increment Funds towards reimbursing **DEVELOPER** for the construction of the Public Infrastructure Improvements required under the Project Plan, Financing Plan and this Agreement.

6.5 **CITY** and **BOARD** shall use their respective best efforts to issue, or cause to be issued a Certificate of Completion for items satisfactorily brought to Completion by **DEVELOPER** in constructing this Project.

6.6 **CITY** and **BOARD** hereby agree that all reimbursement requests from **DEVELOPER** shall be processed in accordance with **CITY**'s CPPR policy, attached hereto as Exhibit E.

VII. COMPENSATION TO DEVELOPER

7.1 Upon completion of Public Infrastructure Improvements in each Phase of the Project, Developer shall submit to City a completed Contract Progress Payment Request (hereinafter "CPPR"), as detailed in Exhibit E hereof. Upon **CITY** review and approval, as evidenced by a written CPPR Approval issued by **CITY**, said CPPR shall be presented to **BOARD** for review and possible approval.

7.2 Upon **BOARD** approval and direction, **DEVELOPER** shall receive a maximum payment of up to one million six hundred ninety-six thousand, eight hundred fifty dollars (\$1,696,850.00) for infrastructure improvements, plus permitted interest on eligible project costs, if any, not to exceed one million, ten thousand and two dollars (\$1,010,002.00), for a maximum total payment of two million, seven hundred six thousand, eight hundred fifty-two dollars (\$2,706,852.00), as full reimbursement for designing and constructing the Public Infrastructure Improvements required under the Project Plan, Financing Plan and this Agreement.

7.3 Within twenty (20) business days following **BOARD** approval and direction, **CITY** shall issue a reimbursement check payable to **DEVELOPER** for the approved, available reimbursable amount from the TIRZ fund.

7.4 The sole source of the funds to reimburse **DEVELOPER** for Project Costs shall be the Available Tax Increment Funds levied and collected on the Zone Property and contributed by the Participating Taxing Entities participating in the Zone to the fund created and maintained by **CITY** for the purpose of implementing the public infrastructure improvements of the Project.

7.5 If Available Tax Increment Funds do not exist in an amount sufficient to make such payments in full when the payments are due to **DEVELOPER** under this Agreement, partial payments shall be made to **DEVELOPER**, and the remainder shall be paid as Available Tax Increment Funds become available. No fees, costs, expenses, or penalties shall be paid to **DEVELOPER** on any late payment.

7.6 If any payment to **DEVELOPER** is held invalid, ineligible, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the charter, codes, or ordinances of the **CITY**, then and in that event it is the intention of the parties hereto that such invalid, ineligible, illegal or unenforceable payment shall be repaid in full by **DEVELOPER** to **CITY** for deposit in the fund created and maintained by **CITY** for the purpose of implementing the public infrastructure improvements of the Project, and that the remainder of this Agreement shall be construed as if such

invalid, illegal or unenforceable payment was never contained herein.

VIII. INSURANCE

8.1 **DEVELOPER** shall, prior to the commencement of any work under this Agreement, furnish an original completed Certificate(s) of Insurance to **CITY**'s Neighborhood Action Department and City Clerk's Office, and which shall be clearly labeled "Lackland Hills TIRZ" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to **CITY**'s Neighborhood Action Department and the Clerk's Office, and no officer or employee, other than **CITY**'s Risk Manager, shall have authority to waive this requirement.

8.2 **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by **CITY**'s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

8.3 **DEVELOPER**'s financial integrity is of interest to **CITY**, therefore, subject to **DEVELOPER**'s right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **DEVELOPER** or **DEVELOPER**'s Contractor, shall obtain and maintain in full force and effect during all Public Infrastructure Improvements required by the Project Plan and Financing Plan, and any extension hereof, at **DEVELOPER** or **DEVELOPER**'s Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A - or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

Type	Amount
(1) Worker's Compensation & Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
(2) Comprehensive General Liability (Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Combined limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate or its equivalent in umbrella or excess liability coverage
(3) Business Automobile Liability (any auto, including employer's non-owned and hired auto coverage)	\$1,000,000 combined single limit per occurrence

8.4 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY**, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of

the parties hereto or the underwriter of any such policies). Upon such request by **CITY**, **DEVELOPER** or **DEVELOPER**'s contractor shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

8.5 **DEVELOPER** agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance shall contain the following required provisions:

8.5.1 Name **CITY** and its officers, employees, and elected representatives as additional insured as respects operations and activities of, or on behalf of, the named insured performed under agreement with **CITY**, with the exception of the Workers' compensation policy;

8.5.2 Provide for an endorsement that the "other insurance" clause shall not apply to **CITY** where **CITY** is an additional insured shown on the policy;

8.5.3 Workers' compensation and employers' liability policy shall provide a waiver of subrogation in favor of **CITY**.

8.6 **DEVELOPER** shall notify **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following address:

City of San Antonio
Neighborhood Action Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

8.7 If **DEVELOPER** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement; however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have and is not the exclusive remedy for failure of **DEVELOPER** to maintain said insurance or secure such endorsement. In addition to any other remedies **CITY** may have upon **DEVELOPER**'s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **DEVELOPER** to stop work hereunder, and/or to withhold any payment(s) that become due to **DEVELOPER** hereunder until **DEVELOPER** demonstrates compliance with the requirements hereof.

8.8 Nothing herein contained shall be construed as limiting in any way the extent to which **DEVELOPER** may be held responsible for payments of damages to persons or property resulting from **DEVELOPER**'s or its general contractor's performance of the work covered under this Agreement.

8.9 **DEVELOPER** shall also indemnify **CITY**, **BOARD**, AND ALL OTHER PARTICIPATING TAXING ENTITIES and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of **DEVELOPER**'s and **DEVELOPER**'s general contractor's actions related to the construction of the Public Infrastructure Improvements.

8.10 **DEVELOPER** shall also require its general contractor or general contractors working on this Project to indemnify **CITY, BOARD**, and all other Participating Taxing Entities and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of their actions related to the performance of this Agreement, utilizing the same indemnification language contained herein, in its entirety.

8.11 **WORKERS COMPENSATION INSURANCE COVERAGE**

8.11.9.1 Definitions for this paragraph:

8.11.1.1 "Certificate of coverage" ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Phase of the Project for the duration of the project.

8.11.1.2 "Duration of the project" - includes the time from the beginning of the work on the Project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

8.11.1.3 "Persons providing services on the project" ("subcontractor" in §406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

8.11.1.4 "Contractor" shall mean the general contractor or general contractors of Developer or their subcontractors.

8.11.1.5 "Governmental Entity" shall mean the City of San Antonio.

8.11.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all employees of the Contractor providing services on the Project for the duration of the project.

8.11.3 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

8.11.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Phase of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

8.11.5 The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

8.11.5.1 a certificate of coverage, prior to that person beginning work on the Phase of the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

8.11.5.2 no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Phase of the Project.

8.11.6 The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

8.11.7 The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

8.11.8 The Contractor shall post on the Zone Property a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered and stating how a person may verify coverage and report lack of coverage.

8.11.9 **DEVELOPER** shall contractually require each person with whom it contracts to provide services on the Project, to:

8.11.9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all of its employees providing services on the Project for the duration of the applicable Phase of the Project;

8.11.9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the applicable Phase of the Project;

8.11.9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;

8.11.9.4 obtain from each other person with whom it contracts, and provide to the Contractor:

8.11.9.4.1 a certificate of coverage, prior to the other person beginning work on the Project; and

8.11.9.4.2 a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;

8.11.9.5 retain all required certificates of coverage on file for the duration of the applicable Phase of the Project and for one year thereafter;

8.11.9.6 notify the governmental entity in writing by certified mail or personal delivery within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

8.11.9.7 contractually require each person with whom it contracts, to perform as required by paragraphs 8.11.9.1 – 8.11.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.

8.11.10 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the applicable Phase of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

8.11.11 **DEVELOPER's** failure to comply with any of these provisions is a breach of contract by **DEVELOPER** that entitles the **CITY** to terminate this Agreement if **DEVELOPER** does not remedy the breach within ten (10) days after receipt of notice of breach from **CITY**.

IX. DEFAULT AND TERMINATION

9.1 In the event that **DEVELOPER** fails to commence construction of the Project, fails to complete construction of the Project, or fails to perform any other obligation pursuant to the terms of this Agreement, **CITY** and/or **BOARD** may terminate this Agreement if **DEVELOPER** does not take adequate steps to cure its failure within ninety (90) calendar days after receiving written notice from **CITY** and/or **BOARD**, requesting the failure be cured. In the event of such default and as the exclusive remedy of **CITY** and/or **BOARD**, **DEVELOPER** shall return any payments under this Agreement for the construction of Public Infrastructure Improvements for any Phase under development at the time of the default within sixty (60) calendar days after receiving written notice from **CITY** and/or **BOARD** that **DEVELOPER** has defaulted on this Agreement; EXCEPT that no refund is due if **DEVELOPER**, with **CITY's** and **BOARD's** written consent, assigns its remaining obligations under this Agreement to a qualified party who is willing and capable of completing **DEVELOPER's** obligations under this Agreement, pursuant to Article XV herein.

9.2 Notwithstanding paragraph 9.1 above, in the event **BOARD** and/or **DEVELOPER** fails to furnish **CITY** any documentation required in Article XIII herein within thirty (30) days following the written request for same, then **BOARD** and/or **DEVELOPER** shall be in default of this Agreement.

X. INDEMNIFICATION

10.1 **DEVELOPER** covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS**, **CITY** (and the elected officials, employees, officers, directors, and representatives of **CITY**), **BOARD** (and the officials, employees, officers, directors, and representatives of **BOARD**), and all other Participating Taxing Entities (and the elected officials, employees, officers, directors, and representatives of these Entities), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon **CITY**, **BOARD**, and/or upon any of the other Participating Taxing Entities directly or indirectly arising out of, resulting from or related to **DEVELOPER'S** negligence, willful misconduct or criminal conduct in its activities under this Agreement, including any such acts or omissions of **DEVELOPER**, any agent, officer, director,

representative, employee, consultant or subconsultants of DEVELOPER, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to CITY, BOARD, and/or the other Participating Taxing Entities under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. DEVELOPER shall promptly advise CITY, BOARD, and the other Participating Taxing Entities in writing of any claim or demand against CITY, BOARD, and any other Participating Taxing Entity related to or arising out of DEVELOPER'S activities under this Agreement and shall see to the investigation and defense of such claim or demand at DEVELOPER's cost to the extent required under the Indemnity in this paragraph. CITY, BOARD, and/or any other Participating Taxing Entity shall have the right, at their option and at their own expense, to participate in such defense without relieving DEVELOPER of any of its obligations under this paragraph.

10.2 It is the EXPRESS INTENT of the parties to this Agreement, that the INDEMNITY provided for in this paragraph, is an INDEMNITY extended by DEVELOPER to INDEMNIFY, PROTECT and HOLD HARMLESS CITY, BOARD, and the other Participating Taxing Entities from the consequences of the CITY'S OWN NEGLIGENCE, BOARD'S OWN NEGLIGENCE, and/or NEGLIGENCE of the other Participating Taxing Entities provided however, that the INDEMNITY provided for in this paragraph SHALL APPLY only when the NEGLIGENT ACT of CITY, BOARD, or of any other Participating Taxing Entity is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of CITY, BOARD, or of any other Participating Taxing Entity is the sole cause of the resultant injury, death, or damage. DEVELOPER further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF CITY (AND IN THE NAME OF CITY), BOARD (AND IN THE NAME OF BOARD), and any other Participating Taxing Entity (and in the name of any other Participating Taxing Entity) any claim or litigation brought against CITY (and its elected officials, employees, officers, directors and representatives), BOARD (and its officials, employees, officers, directors and representatives), and/or any Participating Taxing Entity (their officials, employees, officers, directors and representatives), in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

XI. SITE INSPECTION

11.1 DEVELOPER shall allow CITY and/or BOARD reasonable access to the Zone Property owned or controlled by DEVELOPER for inspections during and upon completion of construction of the Project, and to documents and records necessary for CITY and/or BOARD to assess DEVELOPER's compliance with this Agreement.

XII. LIABILITY

12.1 As between CITY, BOARD or any Participating Taxing Entity and DEVELOPER, DEVELOPER shall be solely responsible for compensation payable to any employee or contractor of DEVELOPER, and none of DEVELOPER's employees or contractors will be deemed to be employees or contractors of CITY, BOARD or any Participating Taxing Entity as a result of the Agreement.

12.2 To the extent permitted by Texas law, no director, officer, employee or agent of CITY, BOARD, or of any other Participating Taxing Entity shall be personally responsible for any liability arising under

or growing out of this Agreement.

XIII. EXAMINATION OF RECORDS

13.1 CITY reserves the right to conduct examinations, during regular business hours and following notice to **BOARD** and **DEVELOPER** of the books and records related to this Agreement with CITY (including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of **BOARD** and/or **DEVELOPER**'s services hereunder) no matter where books and records are located. CITY also reserves the right to perform any and all additional audits relating to **BOARD**'s and/or **DEVELOPER**'s services, provided that such audits are related to those services performed by **BOARD** and/or **DEVELOPER** for CITY under this Agreement. These examinations shall be conducted at the offices maintained by **BOARD** and/or **DEVELOPER**.

13.2 All applicable records and accounts of **BOARD** and/or **DEVELOPER**, together with all supporting documentation, shall be preserved in Bexar County, Texas by **BOARD** and/or **DEVELOPER** throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, and then transferred, at no cost to CITY, to CITY for retention. During this time, CITY may require that any or all of such records and accounts be submitted for audit to CITY or to a Certified Public Accountant selected by CITY within ten (10) days following written request for same.

13.3 Should CITY discover errors in internal controls or in record keeping associated with the Project, **BOARD** and/or **DEVELOPER** shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery and notification by CITY to **BOARD** and/or **DEVELOPER** of such discrepancies. **BOARD** and/or **DEVELOPER** shall inform CITY in writing of the action taken to correct such audit discrepancies.

13.4 If it shall be determined as a result of such audit that **DEVELOPER** has overcharged CITY hereunder, then such overcharges shall be immediately refunded to CITY and become due and payable with interest at the maximum legal rate under applicable law from the date the CITY paid such overcharges. In addition, if the audit determined that there were overcharges of more than two percent (2%) of the greater of the budget or payments to **DEVELOPER** for the year the discrepancy occurred, and CITY is entitled to a refund as a result of such overcharges, then **DEVELOPER** shall pay the cost of such audit.

XIV. NON-WAIVER

14.1 Any provision of this Agreement may be amended or waived if done in writing and signed by CITY, through an ordinance passed and approved by its City Council, **BOARD**, and **DEVELOPER**.

14.2 No course of dealing on the part of CITY, **BOARD**, or **DEVELOPER** nor any failure or delay by CITY, **BOARD**, or **DEVELOPER** in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

XV. ASSIGNMENT

15.1 All covenants and agreements contained herein by CITY and/or **BOARD** shall bind their successors and assigns and shall inure to the benefit of **DEVELOPER** and their successors and assigns.

15.2 CITY and/or **BOARD** may assign their rights and obligations under this Agreement to any governmental entity without prior consent of **DEVELOPER**. If CITY and/or **BOARD** assigns their

rights and obligations under this Agreement then **CITY** and/or **BOARD** shall send **DEVELOPER** written notice of such assignment within fifteen (15) days of such assignment.

15.3 **DEVELOPER** may sell or transfer its rights and obligations under this Agreement only with the written consent of **CITY**, as evidenced by an ordinance passed and approved by its City Council, and **BOARD** when a qualified purchaser or assignee specifically agrees to assume all of the obligations of **DEVELOPER** under this Agreement. This restriction on **DEVELOPER's** rights to sell or transfer is subject to the right to assign as provided in Paragraph 15.6 below.

15.4 Any work or services contracted herein shall be contracted only by written contract or agreement and, unless **CITY** grants specific waiver in writing, shall be subject by its terms, insofar as any obligation of **CITY** is concerned, to each and every provision of this Agreement. Compliance by **DEVELOPER's** contractors and/or subcontractors with this Agreement shall be the responsibility of **DEVELOPER**. Copies of those written contracts must be submitted with the CPPR in order to be considered for eligible project cost reimbursement.

15.5 **CITY** shall in no event be obligated to any third party, including any contractor, subcontractor or consultant of **DEVELOPER**, for performance of work or services under this Agreement except as set forth in Section 15.9 of this Agreement.

15.6 Any restrictions herein on the transfer or assignment of **DEVELOPER's** interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to any corporation or other entity with which **DEVELOPER** may merge or consolidate or which may succeed to a controlling interest in the business of **DEVELOPER**; nor shall the foregoing apply to or prevent **DEVELOPER** from assigning the proceeds of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event, however, shall **CITY** be obligated in any way to the aforementioned financial institution or other provider of capital. This Article does not intend to require **DEVELOPER** to obtain consent of **CITY** for the sale of land to developers, or lots to builders for the construction of homes, apartments or commercial sites, pursuant to the Project Plan.

15.7 Each transfer or assignment to which there has been consent, pursuant to paragraph 15.3 above, shall be by instrument in writing, in form reasonably satisfactory to **CITY**, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of **CITY** and **BOARD** to be bound by and to perform the terms, covenants and conditions of this Agreement. Four (4) executed copies of such written instrument shall be delivered to **CITY**. Failure to first obtain, in writing, **CITY's** consent, or failure to comply with the provisions herein contained shall operate to prevent any such transfer or assignment from becoming effective.

15.8 In the event **CITY** approves the assignment or transfer of this Agreement, as provided in paragraph 15.6 above, **DEVELOPER** shall be released from such duties and obligations.

15.9 Except as set forth in paragraph 15.3, the receipt by **CITY** of services from an assignee of **DEVELOPER** shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of **DEVELOPER** from further observance or performance by **DEVELOPER** of the covenants contained in this Agreement. No provision of this Agreement shall be deemed to have been waived by **CITY** unless such waiver is in writing, and approved by City Council of **CITY** in the form of a duly passed ordinance.

XVI. NOTICE

16.1 Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving party at the following addresses:

CITY

City of San Antonio
City Manager's Office
P.O. Box 893366
San Antonio, Texas 78283-3966
FAX: (210) 207- 7032

BOARD

Gordon Woods
11339 El Sendero
San Antonio, Texas 78233
FAX: (210) 655-1379

DEVELOPER

Gordon Woods
11339 El Sendero
San Antonio, TX 78233
FAX: (210) 655-1379

16.2 Each party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile transmission shall be deemed delivered when receipt of such transmission is received if such receipt is during normal business hours or the next business day if such receipt is after normal business hours. Any communication so delivered in person shall be deemed received when receipted for by or actually received by an officer of the party to whom the communication is properly addressed. All notices, requests or consents under this Contract shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered to have been received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Contract, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Each party shall have the right from time to time and at any time to change its address by giving at least 15 days' written notice to the other party.

XVII. CONFLICT OF INTEREST

17.1 **BOARD** and **DEVELOPER** each acknowledges that it is informed that the Charter of the **CITY** and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the **CITY** or in the sale to the **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

17.2 In accordance with Section 311.0091(h)(1) of the Act, and pursuant to the subsection above, **BOARD** and **DEVELOPER** each warrants and certifies, and this contract is made in reliance thereon,

that it, its officers, employees and agents are neither officers nor employees of the City. **BOARD** and **DEVELOPER** each further warrants and certifies that each member of **BOARD** and that **DEVELOPER** has tendered to the **CITY** a Discretionary Contracts Disclosure Statement in compliance with the **CITY's** Ethics Code.

XVIII. INDEPENDENT CONTRACTORS

18.1 It is expressly understood and agreed by all parties hereto that in performing their services hereunder, **BOARD** and **DEVELOPER** at no time shall be acting as agents of the **CITY** and that all consultants or contractors engaged by **BOARD** and/or **DEVELOPER** respectively shall be independent contractors of **BOARD** and/or **DEVELOPER**. The parties hereto understand and agree that **CITY** shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed by **BOARD** and/or **DEVELOPER** respectively, under this Agreement unless any such claims are due to the fault of **CITY**.

18.2 The parties hereto further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

XIX. TAXES

19.1 **DEVELOPER** shall pay, on or before their respective due dates, to the appropriate collecting authority all Federal, State, and local taxes and fees which are now or may hereafter be levied upon the Zone Property, or upon **DEVELOPER** or upon the business conducted on the Zone Property, or upon any of **DEVELOPER's** property used in connection therewith, including employment taxes; and **DEVELOPER** shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by **DEVELOPER**.

19.2 **DEVELOPER** shall include in the CPPR submission evidence of payment of the taxes and fees above.

XX. COMPLIANCE WITH SBEDA AND EEO POLICIES

20.1 **BOARD** and **DEVELOPER** are each hereby advised that it is the policy of **CITY** that business enterprises eligible as Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. Except for those Public Infrastructure Improvements commenced prior to the creation of the Zone, **BOARD** and **DEVELOPER** each agrees for itself that **BOARD** and **DEVELOPER** will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. **DEVELOPER** further agrees that with respect to the remaining Public Infrastructure Improvements **DEVELOPER** will make a good faith effort to comply with the applicable terms and provisions of **CITY's** Non-Discrimination Policy, **CITY's** Small, Minority or Woman-owned Business Advocacy Policy and **CITY's** Equal Opportunity Affirmative Action Policy, these policies being available in **CITY's** Department of Economic Development, Division of Internal Review and the **CITY's** Office of the City Clerk.

20.2 **DEVELOPER** agrees that if material deficiencies in any aspect of its Small Business Economic Development Advocacy utilization plan are found as a result of a review or investigation conducted by **CITY's** Department of Economic Development, **DEVELOPER** will be required to submit a written

report to **CITY's** Department of Economic Development. **DEVELOPER** will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies. If a GFEP is denied by **CITY's** Department of Economic Development based on reasonable and published criteria, it will constitute failure to satisfactorily resolve any deficiencies by **DEVELOPER**. **DEVELOPER's** Failure to obtain an approved GFEP within ninety (90) days of notice from **CITY's** Department of Economic Development to **DEVELOPER** that includes the specific criteria that have not been met shall constitute a default and result in a penalty on **DEVELOPER** of \$1,000 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by **DEVELOPER** and which can, at the option of the Director of the Department of Economic Development, result in termination of this Agreement.

XXI. WAGES

With respect to the Public Infrastructure Improvements commenced after the creation of the Zone:

21.1 **BOARD** and **DEVELOPER** shall pay wages that are not less than the minimum wages required by Federal and State statutes and **CITY** ordinances to persons employed in their operations hereunder, as set forth in Ordinance No. 71312, passed and approved on March 29th, 1990, attached hereto and incorporated herein for all purposes as Exhibit D.

21.2 **DEVELOPER** shall stipulate in all construction contracts with its general contractor or general contractors engaged in furtherance of the execution of this Agreement that said general contractor or general contractors pay not less than the prevailing wage rate for its workers, and shall attach as an exhibit to said contracts a copy of Exhibit D.

21.3 **DEVELOPER** or its general contractor or general contractors who pays less than the prevailing wage rate to its workers shall pay to **CITY** sixty dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in this Agreement. **DEVELOPER** shall stipulate in all contracts with its general contractor or general contractors engaged by **DEVELOPER** in furtherance of the execution of this Agreement that contractor is subject to this \$60.00 penalty if contractor fails to pay said prevailing wage rates to its workers.

21.4 In accordance with Chapter 2258, Texas Gov't Code, **CITY** shall be entitled to withhold payment from **DEVELOPER** under this Agreement to satisfy this penalty, even if the party incurring the penalty is a general contractor of **DEVELOPER**. If **CITY** withholds payment from **DEVELOPER** as a result of a general contractor's violation, **DEVELOPER** may withhold payment from the general contractor in accordance with Chapter 2258. Further, release or disbursement of funds withheld as a penalty hereunder shall be governed by Chapter 2258.

XXII. CHANGES AND AMENDMENTS

22.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by **CITY**, **BOARD** and **DEVELOPER** and evidenced by passage of a subsequent **CITY** ordinance, as to **CITY's** approval.

22.1.1 Notwithstanding the above, the phasing of the Construction Schedule may be amended by approval of **BOARD** and **CITY**, as evidenced by written agreement between **BOARD** and the Director of the Department of **CITY** responsible for the management of the TIF Program, as long as

the overall Final Project Plan and Final Financing Plans are not materially changed by such amendment. In the event an amendment to the phasing of the Construction Schedule will result in a material change to the overall Final Project Plan or Final Financing Plan, then such amendment shall comply with the requirements of Section 22.1 above. **DEVELOPER** may rely on the determination of the Director of the Department of **CITY** responsible for the management of the TIF Programs whether a change in the phasing of the Construction Schedule would result in a material change to the overall Final Project Plan and Final Financing Plans.

22.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable to **BOARD's** and **DEVELOPER's** services hereunder may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XXIII. SEVERABILITY

23.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the charter, code, or ordinances of **CITY**, then and in that event it is the intent of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intent of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIV. LITIGATION EXPENSES

24.1 Under no circumstances will the Available Tax Increment Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against **CITY** or any other public entity.

24.2 During the term of this Agreement, if **BOARD** and/or **DEVELOPER** files and/or pursues an adversarial proceeding against **CITY** regarding this Agreement without first engaging in good faith mediation of the dispute, then, at **CITY's** option, all access to the funding provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account.

24.3 **BOARD** and/or **DEVELOPER**, at **CITY's** option, could be ineligible for consideration to receive any future funding while any adversarial proceedings regarding this Agreement against **CITY** remains unresolved if it was initiated without first engaging in good faith mediation of the dispute.

24.4 For purposes of this Article, "adversarial proceedings" include any cause of action regarding this Agreement filed by **BOARD** and/or **DEVELOPER** in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration.

XXV. LEGAL AUTHORITY

25.1 Each person executing this Agreement on behalf of the **CITY, BOARD** or **DEVELOPER**, represents, warrants, assures and guarantees that he has have full legal authority to (i) execute this Agreement on behalf of **CITY, BOARD** and/or **DEVELOPER**, respectively and (ii) to bind **CITY, BOARD** and/or **DEVELOPER** to all of the terms, conditions, provisions and obligations herein contained.

XXVI. VENUE AND GOVERNING LAW

26.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

26.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar County, Texas.

XXVII. PARTIES' REPRESENTATIONS

27.1 This Agreement has been jointly negotiated by the **CITY, BOARD** and **DEVELOPER** and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

XXVIII. CAPTIONS

28.1 All captions used herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

(remainder of page intentionally blank)

XXIX.

ENTIRE AGREEMENT

29.1 This written Agreement embodies the final and entire agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.


29.2 The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that if there is a conflict between an exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the exhibit.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed this 4th day of March, 2006.


CITY OF SAN ANTONIO


Sheryl Sculley
CITY MANAGER

DEVELOPER


Name: Gordon Woods
Title: Partner-Operations Manager
Lackland Hills Joint Venture

**BOARD OF DIRECTORS,
REINVESTMENT ZONE NUMBER THIRTEEN**


Name: GORDON A. WOODS
Title: Presiding Officer, Reinvestment Zone Thirteen

Approved as to form: 
City Attorney

EXHIBIT A

Project and Financing Plans

EXHIBIT B

Construction Schedule

EXHIBIT C

Project Status Report

EXHIBIT D

Wage and Hour Ordinance No. 71312

EXHIBIT E

Form and Requirements of Contract Progress Payment Request

Project and Financing Plans

EXHIBIT A

**FINAL PROJECT PLAN
FOR**

**REINVESTMENT ZONE NUMBER TWELVE
CITY OF SAN ANTONIO, TEXAS**

“Lackland Hills”



**Prepared by:
City of San Antonio**

November 22, 2005

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- V. EXHIBITS
 - A. Universal Design Policy Ordinance
 - B. Vicinity/School Districts Map
 - C. Boundary/Flood Plain Map
 - D. Existing Land Use Map/Master Site Plan

I. EXECUTIVE SUMMARY

The City of San Antonio's Tax Increment Reinvestment Zone No. Thirteen ("TIRZ" or "Zone") created on December 13, 2001 through ordinance 95055, will help facilitate the development of an approximately 39.006-acres of land, of which will contain approximately 184 single-family homes with estimated sales prices ranging from \$87,000 to \$94,000. The residential subdivision is known as Lackland Hills. The planned development will have 4000 square foot lots.

The proposed Lackland Hills development is located inside Loop 410 in the southwestern portion of the city within City Council District 4. The developer of the property is Lackland Hills Joint Venture and is requesting the City of San Antonio and Bexar County to participate in the TIF.

The proposed public infrastructure improvements for this project include: site work, drainage, street & approaches, sewer, water, electric, streetlights, platting fees, and water impact fees. The costs for this project are as follows:

Project Cost	
Total Infrastructure	\$1,696,850
Financing Cost	\$1,010,002
Total Project Cost	\$2,706,852
 Total Admin. Expenses	 \$435,000
Grand Total	\$3,141,852

The Lackland Hills Joint Venture has arranged the financing for this project through private funding sources for all infrastructure and site improvements.

The Board of Directors for Lackland Hills Tax Increment Reinvestment Zone No. Thirteen met on November 22, 2005, and approved the Final Project Plan and Final Financing Plans. The life of the Tax Increment Reinvestment Zone (TIRZ) is projected to be 24.81 years with the TIRZ being in existence through fiscal year 2026.

In summary, the proposed Lackland Hills TIRZ will enable the developer to construct 184 affordable and market rate single-family homes. Additionally, the TIRZ will enhance the quality of life for the residents of the neighborhood, and the City will gain a self-sustaining single-family neighborhood in an area that would not otherwise be developed.

II. PROJECT PLAN

A. Project Plan Objectives

The Lackland Hills Project Plan describes project goals and details, and demonstrates how the TIRZ project complies with the City of San Antonio's Master Plan, Universal Design, the Unified Development Code, TIF Guidelines, and other City codes, ordinances and policies.

SCRUB TEAM

An interdepartmental team has evaluated this application for project viability and feasibility. This team coordinated with the developer, neighborhood organizations, and the Neighborhood Action Department to gather and evaluate information, and ensure that the project meets City goals. The City departments that performed the analysis of the Lackland Hills project were: City Attorney's Office; Development Services, Environmental Services, Finance, Fire, Neighborhood Action, Office of Management & Budget, Parks & Recreation, Planning, and Public Works.

MASTER PLAN GOALS

The promotion of targeted infill housing in neighborhoods, particularly older neighborhoods located inside Loop 410 is highly encouraged by the Master Plan (Housing: Policy 4a).

In keeping with the Master Plan, the City has worked with developers in past projects to create design guidelines for appropriate infill. These design guidelines are developed to "complement the architectural design and character of the neighborhood" when designing new housing (Neighborhoods: Policy 4a). In the Lackland Hills project, the new homes are built to correspond with the exterior materials, average home sizes, garage options, and porch design of surrounding neighborhoods.

UNIVERSAL DESIGN

The Master Plan also calls for efforts to facilitate the provisions of choice in housing for special needs populations (Neighborhoods: Policy 4d). Efforts to meet this policy may include ensuring homes are visitable or easily adaptable to disabled persons. Policy 4i requires the community to explore the full range of options to allow people to remain in their homes throughout their lives. The Fair Housing Act Amendments of 1988 and Section 504 of the Rehabilitation Act of 1973 complement the Master Plan Policies by requiring accessibility in all new multi-family housing. An even stronger incentive for assuring housing is universally designed to allow all people to live in the neighborhood of their choice is Senate Bill 623. This legislation requires that all single family affordable housing funded in whole or in part by state or federal funds must be designed to be universally usable to all people regardless of age or disability. The necessary design guidance to achieve this part of the legislation became effective September 1999.

The Lackland Hills project must comply with the Universal Design Policy as shown in Exhibit A: Universal Design Policy Ordinance. The City of San Antonio adopted a Universal Design Policy (Ord. No. 95641) on April 18, 2002, requiring that any person receiving financial assistance from city, state, or federal funds administered by the City of San Antonio for the construction of new single family homes, duplexes, or triplexes, shall construct the units in accordance with specific features including entrance with no

steps, wider doorways (2' 8"), lever door handles, lever controls on kitchen and lavatory faucets, and light switches and electrical receptacles within reachable height.

UNIFIED DEVELOPMENT CODE (UDC)

This project must meet all provisions of the UDC. To comply with the UDC, the project is reviewed and approved by all appropriate agencies at various stages, from initial master planning through platting, plan review, permitting and inspections.

TIF GUIDELINES

The City of San Antonio is dedicated to the revitalization of inner-city neighborhoods and commercial districts, particularly in those areas located inside Loop 410 and south of Highway 90, by using a tiered system of incentive tools, such as Tax Increment Financing (TIF). A TIF project should act as an economic stimulus to the surrounding areas. By leveraging private investment for residential and commercial development within a targeted area, TIF can be a tool used to assist in financing needed public improvements and enhancing infrastructure. Since this project was designated on December 13, 2001, it must comply with the 2000 TIF Guidelines.

The City of San Antonio has adopted a position to encourage the provision of safe, decent, comfortable, and affordable housing as a reality for all the citizens of San Antonio. The TIF provides a mechanism that promotes the city's housing goals by providing reimbursement to the developer for public improvements related to the construction of residential or commercial developments that meet delineated criteria as set forth in the application. It is hoped that utilization of a TIF would buy down costs for the developer encouraging development that would not otherwise have happened given existing conditions.

Lackland Hills meets the TIF Guidelines because of its location in Level 2, inside Loop 410; and by because of its nature as an infill project that supports community revitalization in a neglected area. The City will participate up to 100% for TIRZ that include residential development, business parks for targeted industries, office development, and retail/commercial development in Level 2. The Lackland Hills TIRZ, as a residential project, will provide the financing for infrastructure improvements needed to develop 184 single-family homes on the southwest side of San Antonio.

TIRZ BOARD

TIRZ Board responsibilities are to provide direction to the TIF Unit on issues related to TIRZ project and ensure that the developer provides accurate and quarterly reports (project status reports) to the TIF Unit (due the 15th of October, January, April and July or the first business day thereafter) that includes, but are not limited to: copies of publicly bid documents for public improvements, detailed invoices related to project costs, disclosure of any relevant changes in project, ownership, financial stability, or any anticipated assignment. Furthermore, a TIRZ Board must comply with Robert's Rules of Order, all City resolutions, and Ordinances for Boards and Commissions.

B. Location

Lackland Hills TIRZ is located in the southwest quadrant of the city, about 8.5 miles west of downtown San Antonio and within close proximity to Loop 410. The TIRZ lies within City Council District 4 and within the boundaries of the South San Antonio and Southwest Independent School Districts. The TIRZ is roughly bounded by Medina Base Road to the north; Palm Valley to the west; Apple Valley Drive to the south; and an old abandoned railroad spur right of way (ROW) to the east.

Access to Unit 1 of the zone is provided Palm Valley Dr. and Apple Valley Dr. Access to Unit 2 of the zone is provided through Medina Base Road and a stub out will be located off of the railroad spur ROW located on the east.

The location of the zone is shown in Exhibit B: Vicinity/School Districts Map. The boundaries of the zone are shown in Exhibit C: Boundary/Floodplain Map.

EMERGENCY SERVICE PROVISION

The San Antonio Fire Department has, through its planning efforts, attempted to maintain a satisfactory level of emergency response across the entire city. The goal is to locate facilities so as to position the first arriving pumper truck within 4.25 minutes travel time to 90% of all city blocks. The Lackland Hills TIRZ Project is located in an area that is currently served by the San Antonio Fire Department with existing resources. Fire Station number 36 will serve the Lackland Hills zone.

C. Land Use and Existing Conditions

SURROUNDING LAND USE

The land uses surrounding the TIRZ are primarily residential and public land. The Lackland City subdivision consists of single-family homes built between 1960 and 1980. The existing land uses of the zone are shown in Exhibit C: Existing Land Use Map.

- West, East and South: Lackland City Subdivision surrounds the TIRZ
- North: Indian Creek City Park and Lackland Air Force Base

CURRENT ECONOMIC CONDITIONS

The TIRZ is located in Census Tract 1615.02. According to the 2000 Census, the population of this tract is 6,893. The median household income for this tract is \$31,869. Thirty-percent (30%) of the households in this Census tract had an income that was less than \$19,999 and 23% of the population were below the poverty level.

LAND AND IMPROVEMENT VALUES

In 1990 the median housing value in Census tract 1615.02 was \$37,900 and it grew to \$43,400 in 2000, a 14% increase. In comparison the City's median housing value was \$49,700 in 1990 and it grew to \$68,800 in 2000, a 38% increase. The median housing value in the project's census tract has grown slower than the City as a whole.

According to the 2000 Census, about 69 percent of the housing in the census tract was owner-occupied compared to 58 percent for the city as a whole.

CURRENT ZONING

On February 18, 2005, the TIRZ zone was classified R-4 (Residential Single-Family).

ENVIRONMENTAL CONDITIONS

As part of the application process, the developer provided a Phase I Environmental Site Assessment (ESA) for the project site by Neathery Environmental Services, 900 NE Loop 410 Suite D-315 San Antonio, TX 78209. Based on the report, the assessment concluded the following:

- "There is significant amount of debris in portions of the SITE. The debris at the SITE consisted of carpet, mattresses, wood, sheet rock, roofing material, floor tile, concrete, a car fender, a large piece of unidentified metal, a slide from a swing set, barbeque pits, a door, a fiberglass tub enclosure, wire cable clothes, garden hose, glass, hubcaps, bottles, cans and paper."
- "Some the roofing material and some of the floor tile may contain asbestos. Asbestos was commonly used in the floor tile and the mastic used to glue the floor tile to the concrete. Asbestos was also used in the tar found on some roofing materials."
- "There is a portion of the SITE that is located within the 100 year flood plain. Evidence of significant flooding was observed in the field

"Neathery Environmental Services did not find any other significant environmental conditions on the SITE or on adjacent properties that would adversely impact the SITE. Based on the results of this assessment, Neathery Environmental Services would recommend proper removal and disposal of the debris. Upon removal of the debris Neathery Environmental Services would assign a low level of environmental risk to the SITE."

D. Project Details

The project site consists of 39.006 acres of vacant land. The project proposes to construct 184 single-family units over three phases commencing in 2005 and completing in 2006. The average sales price of the homes is \$90,500 with lot sizes of 4,000 square feet.

The Project Plan and the Financing Plan will allow the developer to request reimbursement for site work, drainage, streets and approaches, sewer, water, electric, street lights, platting fees, sewer impact fees, water impact fees and some soft costs.

APPLICANT/DEVELOPER

Lackland Hills Joint Venture is the applicant and developer for this TIRZ. The contact for Lackland Hills Joint Venture is Gordon Woods, partner in the local homebuilding company Famco Construction, Inc.

NEIGHBORHOOD ASSOCIATIONS, LOCAL ORGANIZATIONS, AND TAXING ENTITIES

As part of project development, the South San Antonio Independent School District has been kept abreast of the project's progress. Statutory Presentations were made to: Bexar County, the Alamo Community College District, and the South San Antonio ISD. The need for community involvement in the development of infill projects is stressed in the

City's Master Plan (Urban Design: Policy 1d). The project developer will continue to provide for community involvement in the development of the project.

MASTER SITE PLAN

A creek divides the site into two unconnected residential pods, a western section and a northeastern section. The western residential section consists of 99 single-family lots and connects to existing streets Palm Valley and Walnut Valley. The northeastern section, 84 lots, connects to Medina Base Road and stubs out onto an undeveloped railroad ROW.

RELOCATION

The Plan does not call for the relocation or displacement of residents.

PARKS AND RECREATION

The development under the Lackland Hills project does not lend itself to the incorporation of a park within the proposed boundaries. This is due to the size of the development. The developer has chosen to pay a fee-in-lieu of dedicating parkland. This fee of \$10,697.91 will be due at the time of plat recordation.

STORMWATER

The developer was required to provide a drainage study and other reports to the City detailing the effects of drainage on site and the surrounding tracts and identifying the area on site currently located within the 100-year flood plain. After the developer agreed to redesign the onsite detention, Storm Water Engineering staff submitted comments recommending approval of the Lackland Hills project on November 26, 2002.

III. ECONOMIC FEASIBILITY

Important to the success of this particular residential development is its ability to capture a share of the local and regional growth as well as effectively compete with comparable product on a number of attributes. Reviewing the components of a project's economic feasibility includes trends that effect short and long term demand for this product. Economic and market factors reviewed include demographic and housing data, including existing housing conditions, sales, and new construction as well as population mobility. The scope of the analysis includes an analysis of these factors for the market area against the larger community. Data provided has been aggregated the census tract, sub-market, and citywide level.

The San Antonio Housing Trust Foundation completed the "Market Analysis for Affordable Single Family Housing in San Antonio's Inner City" study in January 2000. The study presents a collection of information that profiles the housing and market conditions for a targeted area, inside Loop 410 and south of Highway 90. According to the study, among the 60,086 renters and 14,122 target renter households within the targeted area in 1999 there is an estimated pool of 8,100 potential homebuyers from renters. This point is based on the availability of sufficient single-family housing stock. The median housing value for owner occupied units within the City is approximately \$68,800 while the Census tract where this project is located is \$43,400.

The City of San Antonio has adopted a position to encourage the provision of safe, decent, comfortable, and affordable housing as a reality for all the citizens of San Antonio. The TIF provides a mechanism that promotes the city's housing goals by providing reimbursement to the developer for public improvements related to the construction of residential or commercial developments that meet delineated criteria as set forth in the application. It is hoped that utilization of a TIF would buy down costs for the developer encouraging development that would not otherwise have happened given existing conditions.

The Lackland Hills Tax Increment Reinvestment Zone (TIRZ) proposed development will take place on the southwest side of San Antonio, inside Loop 410, off of Medina Base Road, encompassing roughly a 39.006 acre tract of land, where the developer will build an estimated total of 184 single-family units. The estimated sales price per home is \$87,000 to \$94,000 contingent on implementation of the TIRZ.

The area surrounding the development is primarily vacant. There are some developed subdivisions however; most were built over 30 years ago. There are other Tax Increment Zone Applications for at least three project sites.

It is the expectation of the developer to provide long-term improvements to the area by providing affordable and market rate housing to the local community, increased property values, and an injection of new homeowners in the area. Secondary benefits are expected from the additional housing will increase the possibility of new commercial and retail opportunities and in the long run create new jobs. Proposed improvements include infrastructure improvements for water and sewer lines, streets and drainage, sidewalks, street signs and street lights if needed.

MARKET AREA PROFILE**Population**

	1990	2000
TIRZ	6,520	6,893
City	935,933	1,144,554

Change in Population Percentages

	1990-2000
TIRZ	6%
City	22%

Age

	1990	2000
0-17 yrs	39%	37%
18 - 64 yrs	58%	58%
65+ yrs	3%	5%

Educational Attainment

	TIRZ	City
Less than 12 th grade	35%	31%
H.S. Graduate	35%	24%
Some College	23%	27%
Bachelor Degree	6%	12%
Graduate + Degree	1%	6%

The city of San Antonio has been experiencing consistent growth in population of the past 30 years as well as a significant increase since 1980.

The area for the proposed Lackland Hills development has experienced only a slight increase in population over the last ten years, in part due to lack of available housing product. Recent investment in this area could promote an increase in population.

Figures indicate that more than half of the population is eligible members of an active workforce with income earning potential between the ages of 18 and 64 years of age.

The area surrounding the proposed development has a population where approximately 30% of all adults (25 yrs. and above) have achieved at least some secondary education.

The proposed Lackland Hills subdivision would be providing home prices estimated between \$87,000 to \$94,000 and would deviate slightly from current market activity promoting affordable housing. This effort would provide an infusion of new residents with higher education levels and thus be a catalyst for providing for the long-term sustainability of the subdivision.

IV. Lackland Hills TIRZ Board Members

(This roster will be updated as needed to reflect changes in membership and contact information.)

SIX (6) CITY APPOINTMENTS:

Frank Moreno
11339 El Sendero
San Antonio, TX 78233
(210) 922-5737
(210) 922-9599 fax
Appointed 10/17/04

Ellen C. Moreno
11339 El Sendero
San Antonio, TX 78233
(210) 637-5516
(210) 599-7379 fax
Appointed 10/17/04

Maria D. Reyes
4855 Casa Oro
San Antonio, TX 78233
(210) 656-0841
(210) 922-9599 fax
Appointed 10/17/04

Donna Stewart
15 Walnut Grove
Boerne, TX 78006
(210) 558-2100
(210) 543-8553 fax
Appointed 10/17/04

Gordon A. Woods
8227 Elm Glade
San Antonio, TX 78251
(210) 725-7840
(210) 543-8553 fax
Appointed 10/17/04

Vacant Position

THREE (3) COUNTY APPOINTMENTS:

Pete Mireles
800 Vista Valet #105
San Antonio, TX 78216
(210) 260-9897
(210) 493-9916 fax

Moses Suarez
Bexar County Court House
100 Dolorosa, Suite 1.2
San Antonio, TX 78205
(210) 335-2611
(210) 335-2215 fax

Anastasia Valdes
Vista Verde Plaza
233 N. Pecos, Suite 420
San Antonio, TX 78207
(210) 335-3753
(210) 335-6755 fax

STATE SENATOR & REPRESENTATIVE (EX OFFICIO):

The Honorable Frank Madla
State Senator, District 19
1313 SE Military Drive, Suite 101
San Antonio, TX 78214
(210) 927-9464
(210) 922-9521 (fax)
Capitol Phone: (512) 463-0119

The Honorable David M. Leibowitz
State Representative, House District 117
7323 Hwy 90W Suite 200
San Antonio, TX 78227
(210) 645-4400
Capitol Phone: (512) 463-0269
Capitol Fax: (512) 320-0555

V. Exhibits

- A. Universal Design Policy Ordinance
- B. Vicinity/School Districts Map
- C. Boundary/Flood Plain Map
- D. Existing Land Use map/Master Site Plan

Exhibit A

AN ORDINANCE **95641**

AMENDING CHAPTER SIX OF THE CITY CODE TO REQUIRE SPECIFIC DESIGN FEATURES TO CREATE BARRIER-FREE CONSTRUCTION IN NEW SINGLE FAMILY HOMES, DUPLEXES AND TRIPLEXES BUILT WITH FINANCIAL ASSISTANCE FROM THE CITY.

* * * * *

WHEREAS, the TEXAS GOVERNMENT CODE, Section 2306.514 requires universal design in single family homes receiving federal and state funds administered by the Texas Department of Housing and Community Affairs; and

WHEREAS, the federal Fair Housing Act Amendments of 1988 require universal design elements in all newly constructed multi-family housing of four or more units; and

WHEREAS, the Community Revitalization Action Group has recommended that the City of San Antonio "establish urban design, neighborhood planning, accessibility and sustainability guidelines" for developers seeking public assistance, with the goal of creating stable, sustainable neighborhoods with diverse populations; and

WHEREAS, universal design provides barrier-free housing for persons throughout their life and this sustainability in affordable housing ensures that, not only will the home continue to be affordable, but it will also continue to serve the physical needs of family members and visitors from childhood to senior years; and

WHEREAS, a home is the single largest financial investment for most families and the average cost of universal design features included in new construction is much less than later modification for accessibility when such features are required; and

WHEREAS, the senior population will double by the year 2030 and most of these seniors (85%) prefer to remain in their homes (AARP), and universal design retains elders in the neighborhood to provide cultural stability and continuity; and

WHEREAS, approximately 18% of U. S. citizens are persons with disabilities; and

WHEREAS, senior citizens and persons with disabilities benefit especially from universal design in affordable single family homes, duplexes, and triplexes; **NOW THEREFORE**;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 6, Buildings, of the City Code of San Antonio, Texas is hereby amended by adding a new Article XII, Universal Design and Construction Requirements For New Single Family Homes, Duplexes And Triplexes Built With Funds Administered By The City Of San Antonio as follows:

Sec. 6-298-299. Reserved.

Article XII. Universal Design and Construction Requirements For New Single Family Homes, Duplexes And Triplexes Built With Funds Administered By The City Of San Antonio.

Sec. 6-300. Universal Design and Construction Requirements.

If a person receives financial assistance from city, state, or federal funds administered by the City of San Antonio for the construction of new single family homes, duplexes, or triplexes, that person shall construct the units in accordance with all other city codes and the following requirements.

- (a) At least one entrance shall have a 36-inch door and be on an accessible route. (An accessible route is a continuous, unobstructed path at least 36 inches wide connecting all interior and exterior elements and spaces of a house and site including corridors, parking, curb ramps, crosswalks and sidewalks and served by a no-step, flat entrance with a beveled threshold of ½ inch or less).
- (b) All interior doors shall be no less than 32 inches wide, except for a door that provides access to a closet of fewer than 15 square feet in area.
- (c) Each hallway shall have a width of at least 36 inches and shall be level with ramped or beveled changes at each door threshold.
- (d) All bathrooms shall have the walls reinforced around the toilet for potential installation of grab bars. Walls around the shower and tub shall be reinforced for potential installation of grab bars or a pre-manufactured tub and shower surround may be used which includes grab bar(s) certified to meet the ADA requirement to bear a 250 pound load. Wall reinforcements shall comply with the standards set forth in requirement 6, Reinforced Walls For Grab Bars of the Fair Housing Act Design and Construction Guidelines; Federal Register/Volume 56 No.44/Wednesday, March 6,1991/Rules and Regulations, a copy of which is attached hereto an incorporated herein for all purposes as Attachment I.
- (e) Each electrical panel, light switch or thermostat shall be mounted no higher than 48 inches above the floor. Each electrical plug or other receptacle shall be at least 15 inches from the floor.
- (f) An electrical panel located outside the dwelling unit must be between 18 inches and 42 inches above the ground and served by an accessible route.

- (g) All hardware installed to open/close doors and operate plumbing fixtures shall be lever handles.

Sec. 6-301. Applicability.

- (a) This article applies to the construction of all new single family homes, duplexes or triplexes, for which an application for financial assistance from the City of San Antonio or its agents is received and for which a building permit will be issued under the City of San Antonio Building Code after the effective date of this ordinance.
- (b) City of San Antonio financial assistance covered by this article includes but is not limited to:
- (1) Contractual agreements involving a City of San Antonio funded program or fund, including the San Antonio Housing Trust Foundation, Inc. or similar programs;
 - (2) Real estate purchase, lease, fee waiver, tax phase in, tax abatement;
 - (3) Donation of land by the City of San Antonio or its agents; or
 - (4) Disbursement of federal, state, or city construction funds, for example but not limited to, U. S. Department of Housing and Urban Development funds such as Community Development Block Grant Program (CDBG) funds, Housing Investments Partnership Act (HOME Program) funds, and Housing Opportunities for Persons With Aids Program funds, and funds disbursed under the Federal Emergency Management Act.

Sec. 6-302. Waiver Of Exterior Accessibility Requirements.

- (a) The Director of Development Services or his designee may only grant modifications or an exemption to the requirements of this Article regarding full compliance with exterior path of travel on an individual case-by-case basis. The criteria for granting a modification or exemption are as follows:
- (1) The lot rises or falls so steeply from the street that a maximum 1:12 slope cannot be achieved without extensive grading; and
 - (2) No vehicular access to the back of the house will be available by means of an alley.
- (b) Appeals of orders, decisions or determinations made by the Director of Development Services may be made to the Building and Fire Code Board of Appeals.

Sec. 6-303. Implementation.

- (a) A copy of this ordinance and attachments shall be included in city contracts funding the new construction of single family homes, duplexes and triplexes entered into by the City of San Antonio or its agents, for example but not limited to, The San Antonio Housing Trust Fund, the Department of Housing and Community Development and the Community Initiatives Department.
- (b) Architects and builders shall:
- (1) Clearly stamp or print "Universal Design" on plans submitted in accordance with this Article;

(2) Clearly identify design elements complying with Section 6-300 and attached to City of San Antonio funding contracts; and

(3) Certify that the plans comply with the requirements of this Article.

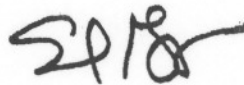
(c) Plan checking, construction inspections and enforcement shall be accomplished by the Development Services Department in accordance with existing procedures.

SECTION 2. Should any article, section, part, paragraph, sentence, phrase, clause, or word of this Ordinance, or any appendix hereof, for any reason, be held illegal, or invalid, or any exception to or limitation upon any general provision contained in this Ordinance or its attachments or held to be unconstitutional or invalid, the remainder shall, nevertheless, stand as effective and as valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid.

SECTION 3. The City Clerk for the City of San Antonio is hereby directed to publish notice of the Ordinance as required by the Charter of City of San Antonio and the laws of the State of Texas.

SECTION 4 This ordinance shall take effect on the tenth day from the date of passage hereof.

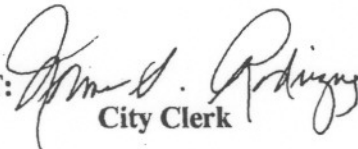
PASSED AND APPROVED this 18th day of APRIL, 2002.



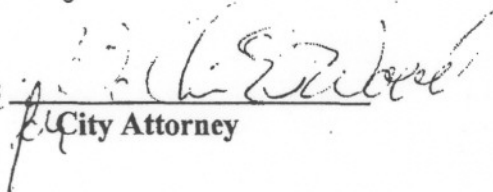
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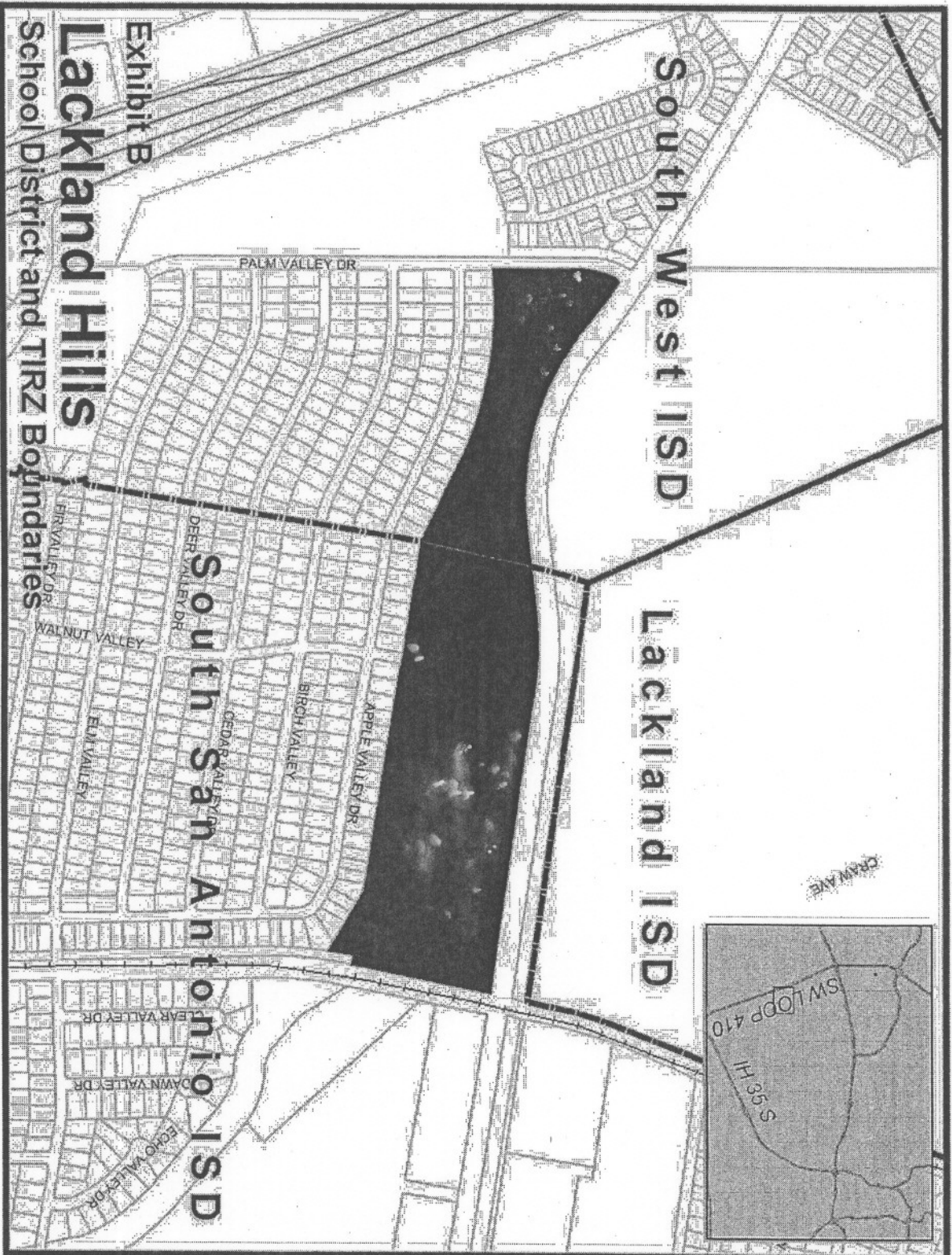
EDWARD D. GARZA

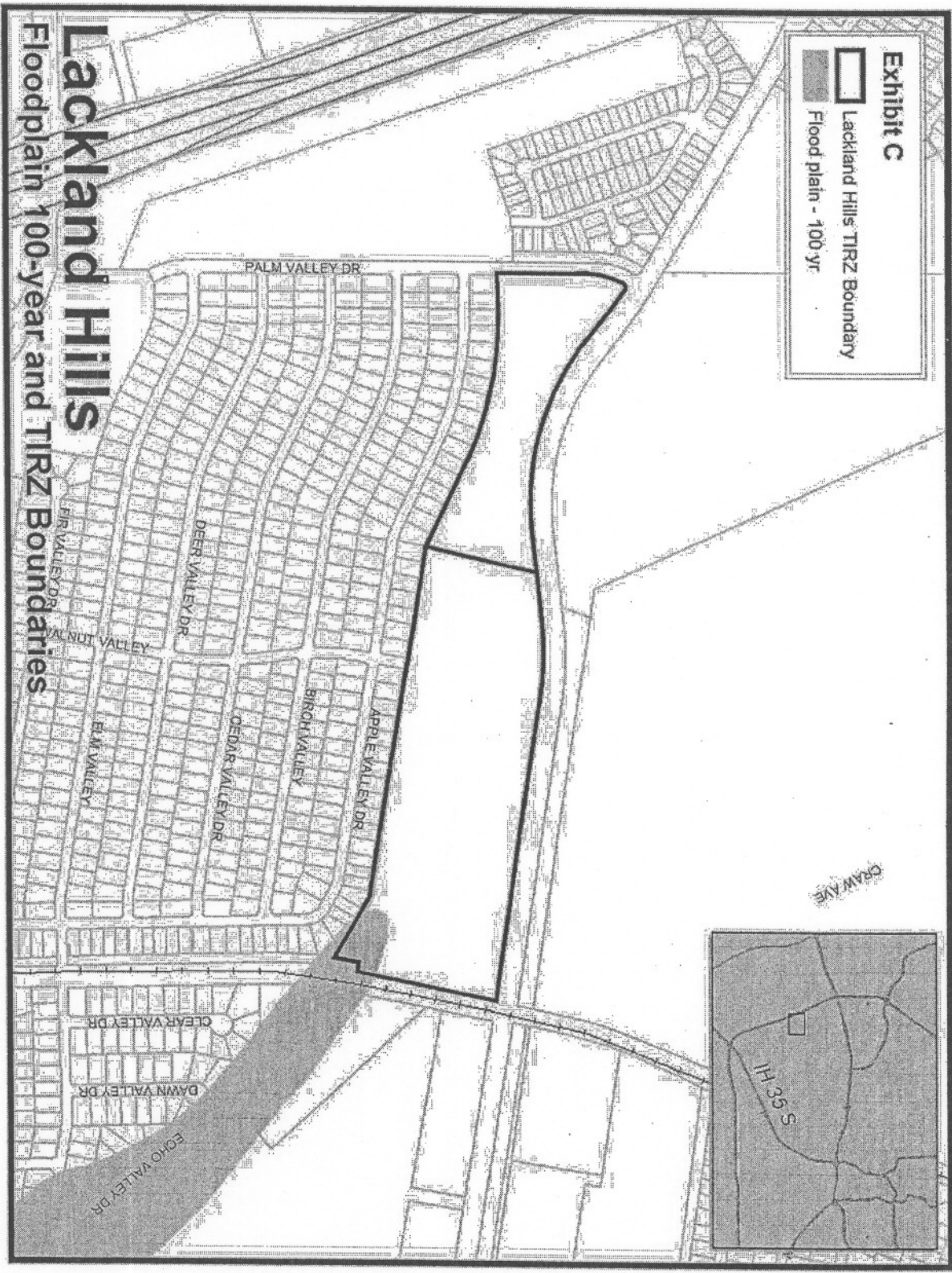
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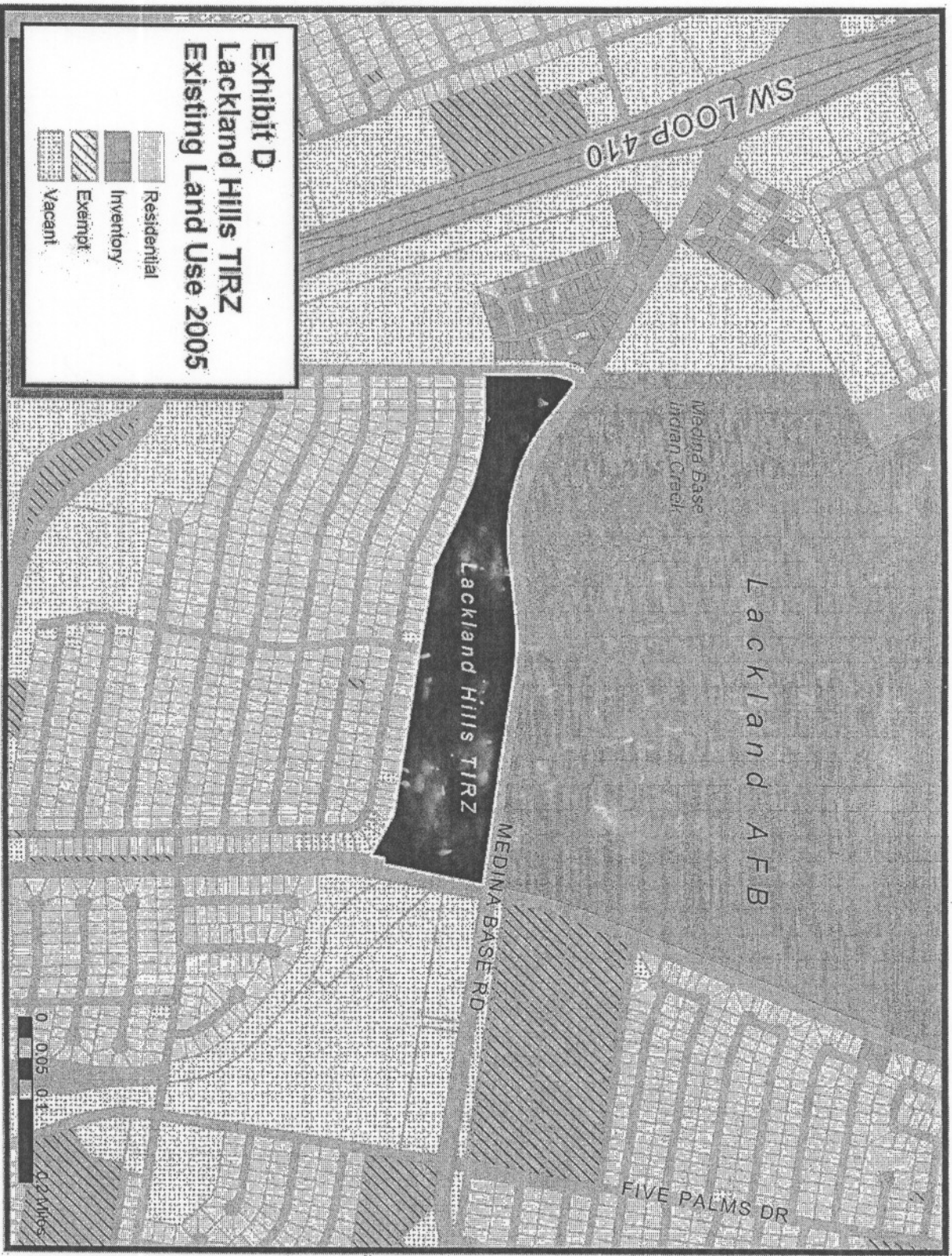

City Clerk

APPROVED AS TO FORM:


City Attorney







CITY OF SAN ANTONIO, TEXAS
Neighborhood Action Department



Lackland Hills
Tax Increment Reinvestment Zone Thirteen
Final Finance Plan

**Participation Levels of City (100%), and Bexar County
(100% of Operation and Maintenance portion of tax rate)**

November 22, 2005

Lackland Hills Subdivision Final Reinvestment Zone Financing Plan

Introduction

The Lackland Hills Subdivision is located in the west section of the City of San Antonio south of Highway 90 and within Loop 410 at Medina Base Road and Palm Valley Drive. The development is in the South San and Southwest Independent School Districts and encompasses 39.006 acres. The 2001 base value is \$120,000 and the new value to be added is estimated at \$16,708,900. The project includes 184 single-family homes with an average sales price of \$90,250. Average sales prices range between \$87,000 and \$94,000. The total public infrastructure capital cost is estimated at \$1,696,850. The Developer is Lackland Hills Joint Venture, a partnership formed October 1, 2000 to develop this project. The venture has limited experience developing small-scale projects in San Antonio. Performance and payment bonds will be provided in connection with public infrastructure improvements associated with the project. The life of the Tax Increment Reinvestment Zone (TIRZ) is projected to be 24.81 years with the TIRZ being in existence through fiscal year 2026.

Public Infrastructure

The public infrastructure improvements and related capital costs include site work, 4,830 linear feet of streets, 9,660 linear feet of curbs/sidewalks, street lights, drainage, drainage detention, utilities, platting, 5,500 linear feet of sewer lines, water and sewage impact fees, engineering/surveying fees, contingency, construction management, and site security. The capital cost is estimated at \$1,696,850.

Plan of Finance

The base value of the TIRZ is \$120,000. Projected captured values that would be taxed to produce revenues to pay for the capital costs of the public infrastructure improvements commences in tax year 2004 with collections commencing in tax year 2004 (fiscal year 2005). Captured values grow from \$102,900 in tax year 2004 to \$16,695,194 in tax year 2025.

The taxing jurisdictions and tax rate per \$100 valuation utilized in the analysis include: City of San Antonio at \$0.578540 and Bexar County at \$0.281519. This produces annual revenue of \$863 in fiscal year 2005; \$748 in fiscal year 2006; \$47,669 in fiscal year 2007; \$117,295 in fiscal year 2008; \$139,999 in fiscal years 2009 through 2026. No growth in tax rate or values is assumed.

The cost of the public infrastructure improvements is incurred by the Developer and paid over time from revenues produced by the TIRZ. In addition to the capital costs, other costs to be paid from TIRZ revenues include the City's financial advisor and certain City of San Antonio and/or Administrator fees. Revenues derived from the TIRZ will be used to pay costs in the following order of priority of payment: (i.) first, to the payment of initial costs associated with the creation of the TIRZ incurred by the governmental entities participating in the TIRZ; (ii.) second, all other ongoing administrative fees pertaining to the City and to Bexar County; and (iii.) to the Developer, on an annual basis, as TIRZ revenues are available for such payments.

The Developer's capital cost incurred for public infrastructure improvements is \$1,696,850. Revenues from the TIRZ are used to pay this amount plus financing costs if any on the unpaid balance at a rate of 4.54%. Developer payments are scheduled to begin in fiscal year 2005. Any negative carry by the Developer would add additional interest to be paid to the Developer at an interest rate of 4.54%. The earliest projected payoff of the capital cost would occur in fiscal year 2026 and includes an estimated Developer contribution of \$455,298.

The TIRZ collections for this project shall not extend beyond September 30, 2026, and may be terminated earlier once each taxing entity has deposited its respective amount described in the table below.

TABLE – TIRZ Contributions		
Participating Taxing Entities	Maximum Dollar Contributions	Max. Length of Contribution
City of San Antonio	\$ 2,113,444.43	September 30, 2026
Bexar County	\$ 1,028,407.30	September 30, 2026
Maximum Reimbursable Amt.	\$ 3,141,851.73	

Limited Obligation of the City or Participating Governmental Entities

The City and Participating Governmental Entities shall have a limited obligation to impose, collect taxes, and deposit such tax receipts into a TIRZ fund so long as the project is viable and capital costs incurred by the Developer have not been fully paid. The TIRZ collections for this project shall not extend beyond September 30, 2026, and may be terminated prior to September 30, 2026, upon payment of public improvements capital costs incurred by the Developer totaling \$1,696,850 or for the failure of the Developer to perform, or for any other reason deemed statutorily appropriate by the City and the Participating Governmental Entities.

Any costs incurred by the Developer are not and shall never in any event become general obligations or debt of the City or any of the Participating Governmental Entities. The public improvement infrastructure costs incurred by the Developer shall be paid solely from the TIRZ revenues and shall never constitute a debt, indebtedness or a pledge of the faith and credit or taxing power of the State, the City, the Participating Governmental Entities, any political corporation, subdivision, or agency of the State.

Developer's Risk

All financing, developmental costs, construction costs, improvements, damages, or other costs incurred with respect to this project are at the sole risk of the Developer. Neither the City nor any Participating Governmental Entity shall incur any risk whatsoever associated with the development, construction, completion or failure of the project. In the event that the project fails, is abandoned by the Developer or for any reason is not completed, the City shall have the right to terminate the TIRZ and any funds remaining in the TIRZ account shall be distributed to the City and Participating Governmental Entities on a pro rata basis in accordance with each entity's participation level.

Compliance

The Developer shall comply with all federal, state and local laws, rules and regulations.

Reporting

The Developer shall submit a project status report and financial report on a quarterly basis to the City.

Inspection

The City, Participating Governmental Entities, or Administrator shall have the right to inspect the project site or sites and the premises of the Developer without notice.

City of San Antonio
Lackland Hills - TIF Reinvestment Zone
Summary Fact Sheet
September 1, 2005

Agenda: 1. Preliminary Finance Plan

Plan of Finance:	Site Area	39,006	Acres
	Single Family Development	29,326	Acres
	Flood Right-of-Way	8,991	Acres
	Drainage Detention	0,689	Acres
	Base Value (2001) In City	\$ 120,000	
	* Average Single Family Home Price	\$ 90,250	Per home
	Annual average range	\$87,000 - \$94,000	

Project Year:			
Single Family Development	2005	62	Single Family Homes
	2006	92	Single Family Homes
	2007	30	Single Family Homes
Total		<u>184</u>	

Experience of Developer:
Lackland Hills Joint Venture
San Antonio, Texas

The Lackland Hills Joint Venture was created October 1, 2000 to develop this project. The venture has limited experience developing small scale projects in San Antonio. Famco Construction built 45 homes during 1999 to 2003

Francisco D. Moreno	49.5%
Gordon A. Woods	49.5%
FAMCO Construction	<u>1.0%</u>
	100.0%

Rosin-Johnson, Inc
San Antonio, Texas

A civil engineering firm that has experience with subdivision planning, design and construction.

Performance Bonds: See Development Agreement

Payment Bonds: See Development Agreement

Assumptions:	Captured Value	\$ 16,695,194
	Assessed Value Growth Factor	0.00%
	Collection Rate	97.50%
	Estimated Total TIF Revenues	\$ 2,686,554
	Estimated TIF Life (12/13/2001 to 9/30/2026)	24.81 Years

* Average single family home price is determined as the total value of new development divided by the number of single family homes.

Lackland Hills - TIF Reinvestment Zone

Sources and Uses

Sources of Funds

TIF Revenues	\$ 2,686,554
Developer Contribution	\$ 455,298
Total Sources of Funds	\$ 3,141,852

Uses of Funds

	Phase I 2004	Phase II 2005	Phase III 2006	Phase IV 2007	Total Infrastructure Improvements
Begin Construction					
Single Family Units	0	62	92	30	184
Public Improvements					
Hard Cost					
Site Work	\$ 178,000	\$ 12,000	\$ -	\$ -	\$ 190,000
Streets & Approaches	\$ 236,000	\$ 274,000	\$ -	\$ -	\$ 510,000
Drainage	\$ 16,000	\$ 89,000	\$ -	\$ -	\$ 105,000
Sewer	\$ 231,000	\$ 29,000	\$ -	\$ -	\$ 260,000
Water	\$ 197,000	\$ 48,000	\$ -	\$ -	\$ 245,000
Electric	\$ 46,216	\$ -	\$ -	\$ -	\$ 46,216
Street Lights	\$ 21,756	\$ -	\$ -	\$ -	\$ 21,756
Platting Fees	\$ 15,044	\$ 9,715	\$ -	\$ -	\$ 24,759
Hard Cost Total	\$ 941,016	\$ 461,715	\$ -	\$ -	\$ 1,402,731
Soft Cost					
Engineering-Surveying	\$ 175,000	\$ 20,000	\$ 6,000	\$ 3,000	\$ 204,000
Geotechnical Testing	\$ 4,119	\$ 20,000	\$ -	\$ -	\$ 24,119
Contingency	\$ -	\$ 15,000	\$ 10,000	\$ 5,000	\$ 30,000
Construction Management	\$ 12,000	\$ -	\$ -	\$ -	\$ 12,000
Site Security	\$ -	\$ 8,000	\$ 12,000	\$ 4,000	\$ 24,000
Soft Cost Total	\$ 191,119	\$ 63,000	\$ 28,000	\$ 12,000	\$ 294,119
Grand Total	\$ 1,132,135	\$ 524,715	\$ 28,000	\$ 12,000	\$ 1,696,850
Total Infrastructure	\$ 1,696,850				
Financing Cost @ 4.54%	\$ 1,010,002				
Total Payments to Lackland Hills	\$ 2,706,852				
Total Admin. Expenses	\$ 435,000				
Grand Total	\$ 3,141,852				
Project Financing Surplus (Shortage)	\$ (0)				

Lackland Hills - TIF Reinvestment Zone Projected Tax Increment Revenue

Tax Year	Tax Increment Zone				City of San Antonio			Bexar County			Combined TIF Collections	Fiscal Year Ending
	Beginning Assessed Value	Annual Value of New Development	Projected Year-End Assessed Value	Projected Captured Value	Captured Taxable Value	Tax Rate Contribution	Tax Increments	Captured Taxable Value	Tax Rate Contribution*	Tax Increments		
2001	120,000	-	120,000	-	-	0.578540	-	-	0.320756	-	-	2002
2002	120,000	-	120,000	-	-	0.578540	-	-	0.317571	-	-	2003
2003	120,000	-	120,000	-	-	0.578540	-	-	0.320952	-	-	2004
2004	120,000	102,900	222,900	102,900	102,900	0.578540	580	102,900	0.281519	282	863	2005
2005	222,900	-	209,194	89,194	89,194	0.578540	503	89,194	0.281519	245	748	2006
2006	209,194	5,595,500	5,804,694	5,684,694	5,684,694	0.578540	32,066	5,684,694	0.281519	15,603	47,669	2007
2007	5,804,694	8,303,000	14,107,694	13,987,694	13,987,694	0.578540	78,901	13,987,694	0.281519	38,394	117,295	2008
2008	14,107,694	2,707,500	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2009
2009	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2010
2010	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2011
2011	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2012
2012	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2013
2013	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2014
2014	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2015
2015	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2016
2016	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2017
2017	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2018
2018	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2019
2019	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2020
2020	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2021
2021	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2022
2022	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2023
2023	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2024
2024	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2025
2025	16,815,194	-	16,815,194	16,695,194	16,695,194	0.578540	94,174	16,695,194	0.281519	45,825	139,999	2026
\$ 16,708,900					\$ 1,807,177			\$ 879,377			2,686,554	
Existing Annual Value Growth Factors					Participation Level			Participation Level				
Years 2001-2003				0.00%	Tax Rate Growth Factor			Tax Rate Growth Factor				
Thereafter				0.00%	Tax Rate Collection Factor			Tax Rate Collection Factor				
Combined Compound Growth Rate				0.00%	97.50%			97.50%				

Note: The drainage R.O.W. is dedicated to the City the 3rd quarter of 2004. The value for 8.991 acres then becomes non taxable.
 * Bexar County Participation at only the Operation and Maintenance tax rate not the total tax rate
 **Captured Taxable Value for each Participating Taxing Entities differ due to the exemption by each Taxing Entities.
 *** Revenue projections are subject to fluctuate annually with future tax rates.

Lackland Hills - TIF Reinvestment Zone
Reimbursement for Public Improvements

Fiscal Year Ending	TIF Revenue	Cumulative TIF Revenues	Expenses for Pub. Imp. Infrastructure	Admin. Exp.*	Interest on Deficit	TIF Fund Balance
1-Sep-02	2002	-	-	75,000	-	(75,000)
1-Sep-03	2003	-	-	15,000	(3,405)	(93,405)
1-Sep-04	2004	-	15,323	15,000	(4,241)	(127,968)
1-Sep-05	2005	863	43,471	15,000	(5,810)	(191,385)
1-Sep-06	2006	748	56,296	15,000	(8,689)	(270,622)
1-Sep-07	2007	47,669	56,296	15,000	(12,286)	(306,535)
1-Sep-08	2008	117,295	91,296	15,000	(13,917)	(309,453)
1-Sep-09	2009	139,999	106,707	15,000	(14,049)	(305,210)
1-Sep-10	2010	139,999	106,346	15,000	(13,857)	(300,414)
1-Sep-11	2011	139,999	104,895	15,000	(13,639)	(293,949)
1-Sep-12	2012	139,999	104,398	15,000	(13,345)	(286,693)
1-Sep-13	2013	139,999	103,810	15,000	(13,016)	(278,520)
1-Sep-14	2014	139,999	102,131	15,000	(12,645)	(268,297)
1-Sep-15	2015	139,999	101,407	15,000	(12,181)	(256,886)
1-Sep-16	2016	139,999	100,592	15,000	(11,663)	(244,142)
1-Sep-17	2017	139,999	98,687	15,000	(11,084)	(228,915)
1-Sep-18	2018	139,999	97,736	15,000	(10,393)	(212,044)
1-Sep-19	2019	139,999	96,694	15,000	(9,627)	(193,366)
1-Sep-20	2020	139,999	95,561	15,000	(8,779)	(172,708)
1-Sep-21	2021	139,999	94,338	15,000	(7,841)	(149,888)
1-Sep-22	2022	139,999	93,024	15,000	(6,805)	(124,718)
1-Sep-23	2023	139,999	91,619	15,000	(5,662)	(97,000)
1-Sep-24	2024	139,999	91,123	15,000	(4,404)	(67,528)
1-Sep-25	2025	139,999	89,491	15,000	(3,066)	(35,086)
1-Sep-26	2026	139,999	86,768	15,000	(1,593)	1,552
		<u>\$ 2,686,554</u>	<u>\$ 2,028,008</u>	<u>\$ 435,000</u>	<u>\$ (221,994)</u>	

* Annual Administrative Expenses from FY 2003- FY 2026 includes a \$2,000 annual administrative expense for Bexar County

**Lackland Hills - TIF Reinvestment Zone
Participation**

Entity	Tax Rate	Level of Participation	Tax Rate Based on Participation	% of Project	TIF Revenues	TIF Expenses
San Antonio	0.5785400	100%	0.5785400	67.27%	\$ 1,807,177	\$ 2,113,444.43
Bexar County	0.2815190	100%	0.2815190	32.73%	\$ 879,377	\$ 1,028,407.30
Total	0.8600590		0.8600590	100.00%	\$ 2,686,554	\$ 3,141,851.73

**Lackland Hills - TIF Reinvestment Zone
Projected New Value of Tax Increment**

Tax Year	2003	2004	2005	Phase I 2006	Phase II 2007	Phase III 2008	Total	Cumulative Total
2000							\$ -	\$ -
2001							\$ -	\$ -
2002							\$ -	\$ -
2003							\$ -	\$ -
2004		\$ 102,900					\$ 102,900	\$ 102,900
2005			\$ -				\$ -	\$ 102,900
2006				\$ 5,595,500			\$ 5,595,500	\$ 5,698,400
2007					\$ 8,303,000		\$ 8,303,000	\$ 14,001,400
2008						\$ 2,707,500	\$ 2,707,500	\$ 16,708,900
2009							\$ -	\$ 16,708,900
2010							\$ -	\$ 16,708,900
2011							\$ -	\$ 16,708,900
2012							\$ -	\$ 16,708,900
2013							\$ -	\$ 16,708,900
2014							\$ -	\$ 16,708,900
2015							\$ -	\$ 16,708,900
	\$ -	\$ 102,900	\$ -	\$ 5,595,500	\$ 8,303,000	\$ 2,707,500	\$ 16,708,900	

\$ -	Commercial New Value
\$ 16,708,900	Residential New Value
\$ -	Multi Family New Value
<u>\$ 16,708,900</u>	<u>Total New Value</u>

Lackland Hills - TIF Reinvestment Zone
Projected Uses of Tax Increment
Construction Completed Cost

Tax Year	2002	2003	Phase I 2004	Phase II 2005	Phase III 2006	Phase IV 2007	Total
2003							\$ -
2004							\$ -
2005			\$ 1,132,135				\$ 1,132,135
2006				\$ 524,715			\$ 524,715
2007					\$ 28,000		\$ 28,000
2008						12,000.0	\$ 12,000
2009							\$ -
2010							\$ -
2011							\$ -
2012							\$ -
2013							\$ -
2014							\$ -
2015							\$ -
	\$ -	\$ -	\$ 1,132,135	\$ 524,715	\$ 28,000	\$ 12,000	\$ 1,696,850

Lackland Hills - TIF Reinvestment Zone

Projected Tax Increment Revenue

09/01/05

Principal and Interest Requirements

Date	Principal	Interest Rate	Interest	Semi-annual Debt Service	Annual Debt Service
03/01/01	-		-	-	-
09/01/01	-	4.54%	-	-	-
03/01/02	-		-	-	-
09/01/02	-	4.54%	-	-	-
03/01/03	-		-	-	-
09/01/03	-	4.54%	-	-	-
03/01/04	-		-	-	-
09/01/04	-	4.54%	15,323	15,323	15,323
03/01/05	-		15,323	15,323	
09/01/05	-	4.54%	28,148	28,148	43,471
03/01/06	-		28,148	28,148	
09/01/06	-	4.54%	28,148	28,148	56,296
03/01/07	-		28,148	28,148	
09/01/07	-	4.54%	28,148	28,148	56,296
03/01/08	-		28,148	28,148	
09/01/08	35,000	4.54%	28,148	63,148	91,296
03/01/09	-		27,354	27,354	
09/01/09	52,000	4.54%	27,354	79,354	106,707
03/01/10	-		26,173	26,173	
09/01/10	54,000	4.54%	26,173	80,173	106,346
03/01/11	-		24,947	24,947	
09/01/11	55,000	4.54%	24,947	79,947	104,895
03/01/12	-		23,699	23,699	
09/01/12	57,000	4.54%	23,699	80,699	104,398
03/01/13	-		22,405	22,405	
09/01/13	59,000	4.54%	22,405	81,405	103,810
03/01/14	-		21,066	21,066	
09/01/14	60,000	4.54%	21,066	81,066	102,131
03/01/15	-		19,704	19,704	
09/01/15	62,000	4.54%	19,704	81,704	101,407
03/01/16	-		18,296	18,296	
09/01/16	64,000	4.54%	18,296	82,296	100,592
03/01/17	-		16,843	16,843	
09/01/17	65,000	4.54%	16,843	81,843	98,687
03/01/18	-		15,368	15,368	
09/01/18	67,000	4.54%	15,368	82,368	97,736
03/01/19	-		13,847	13,847	
09/01/19	69,000	4.54%	13,847	82,847	96,694
03/01/20	-		12,281	12,281	
09/01/20	71,000	4.54%	12,281	83,281	95,561
03/01/21	-		10,669	10,669	
09/01/21	73,000	4.54%	10,669	83,669	94,338
03/01/22	-		9,012	9,012	
09/01/22	75,000	4.54%	9,012	84,012	93,024
03/01/23	-		7,309	7,309	
09/01/23	77,000	4.54%	7,309	84,309	91,619
03/01/24	-		5,562	5,562	
09/01/24	80,000	4.54%	5,562	85,562	91,123
03/01/25	-		3,746	3,746	
09/01/25	82,000	4.54%	3,746	85,746	89,491
03/01/26	-		1,884	1,884	
09/01/26	83,000	4.54%	1,884	84,884	86,768
<u>\$</u>	<u>1,240,000</u>		<u>\$ 788,008</u>	<u>\$ 2,028,008</u>	<u>\$ 2,028,008</u>

EXHIBIT B

Construction Schedule

Site Area
Single-family Development

39.006 Acres
29.326 Acres

Phase	Year	Number of Units	Type of Construction
1	2005	62	Single-family
2	2006	92	Single-family
3	2007	30	Single-family
	Total	184	

Project Status Report

EXHIBIT C



CITY OF SAN ANTONIO TAX INCREMENT REINVESTMENT ZONE Project Status Report

Pursuant to the Development Agreement, the DEVELOPER has agreed to provide periodic reports of construction to the CITY upon reasonable request. The City requests that the Developer submit a TIRZ project status report every quarter every year until the project is complete, due by:

January 15th, for the first quarter,
April 15th, for the second quarter,
July 15th, for the third quarter and
October 15th, for the fourth quarter.

At the completion of the project, the DEVELOPER shall submit a comprehensive final report.

Each quarterly report must include the following information:

- The number of Private Improvements completed (single-family and/or multi-family and commercial when applicable) and year in which they were completed
- The Public Improvements completed and costs incurred to date by year in which improvements were completed
- Indicate whether the construction is on track with the approved Final Project and Finance Plan
- If the project timeline has slipped, the Developer is to submit an updated project timeline
- The sale prices of the single-family homes completed (Please obtain and provide sales data for original sales price of every home sold.)
- Photos of: housing and commercial developments; before, during and after construction

In addition, for the City to monitor compliance with Sections 7.3 and 7.4 of the Development Agreement, the Developer must submit annually the Certificate of Insurance reflecting proof that:

- the City and its officers, employees and elected representatives are additional insureds as respects the operations and activities of, or on behalf of, the named insured contracting with the City, with the exception of the workers' compensation policy;
- the endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City of San Antonio is an additional insured shown on the policy;
- the Workers' Compensation and employers' liability policy provides a waiver of subrogation in favor of the City of San Antonio; and
- Notification to the City of any cancellation, non-renewal or material change in coverage was given not less than thirty (30) days prior to the change or ten (10) days prior to the cancellation due to non-payment of premiums, accompanied by a replacement Certificate of Insurance.

Attached is a form you may use to fulfill this reporting requirement.

TIRZ Project Progress Report (Construction)	
Name of Project:	TIRZ #:
Progress Report #:	TIRZ Term: From: To:
Period Covered by this Report: From: To:	

The number of Private Improvements (single-family and/or multi-family and commercial if applicable) completed and year in which they were done

Phases (year)	start date	end date	Private Improvements							
			Single-Family Units		Multi-family Units		Commercial Acres and Square Feet		Other Improvements (example: day care centers)	
			Proposed	Completed	Proposed	Completed	Proposed	Completed	Proposed	Completed
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										

The Public Improvements completed and costs incurred to date by year (phase) in which improvements occurred

Phases (year)			Public Improvements										
			Sidewalks and Approaches	Streets	Drainage	Water	Sewer	Electrical (Line Extension)	Gas	Street Lights	Traffic Signal Light	Landscaping	Other
	<i>start date</i>	<i>end date</i>	<i>Linear Feet</i>	<i>Li.Ft.</i>	<i>Li.Ft.</i>	<i>Li.Ft.</i>	<i>Li.Ft.</i>	<i>Li.Ft.</i>	<i>Li.Ft.</i>	<i>Number</i>	<i>Number/Location</i>	<i>Li.Ft.</i>	
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
TOTALS													

➤ Is Construction on track with the approved Final Project and Finance Plan? If not, please submit an updated timeline with the actual construction and the projected buildout.

Year	Original Project Plan			Actual/Projected		
	Single-Family	Multi -Family	Other	Single -Family	Multi -Family	Other
1999						
2000						
2001						
2002						
2003						
2004						
2005						
2006						
2007						
2008						

Certification: I certify, that to the best of my knowledge and belief, the data above is correct and that all outlays were made in accordance with the terms of the Development Agreement.	Signature of Certifying Individual:	Date:
	Type or printed Name and Title:	Telephone #:

Wage and Hour Ordinance No. 71312

EXHIBIT D

AN ORDINANCE 71312

AMENDING ORDINANCE NO. 60110, DATED JANUARY 17, 1985, SO AS TO ADOPT A NEW "GENERAL CONDITIONS" SECTION IN 100% LOCAL FUNDED CITY PUBLIC WORKS CONSTRUCTION CONTRACTS AS SET OUT IN THE REVISED CITY WAGE AND LABOR STANDARD PROVISIONS.

WHEREAS, the City Council wishes to establish the general prevailing rate of per diem wages in the form of a sum certain for each of two distinct categories of wages described as "minimum hourly base pay" and "minimum hourly fringe benefit contribution" for all 100% Locally Funded city construction contracts; and

WHEREAS, there is a new United States Department of Labor Wage Determination Decision for Bexar County, Texas, published in the Federal Register, that applies to such 100% Locally Funded contracts; and

WHEREAS, any 100% Locally Funded City Public Works Construction Contractor/Subcontractor is strictly prohibited from paying the various classification of laborers, workmen, and mechanics any amount less than the "minimum hourly base pay" by the accounting process of adding the reduction in "minimum hourly base pay" to the "minimum hourly fringe benefit contribution" so as to net a combined total of the two categories of the wage; and

WHEREAS, it is the intent of the City Council to allow various classification of laborers, workmen, and mechanics the minimum hourly "cash equivalent" of the appropriate "minimum hourly fringe benefit contribution" listed in a wage determination decision in lieu of benefits contributed to a permissible fringe benefit plan; and

WHEREAS, the city staff has prepared new "General Conditions", governing wages and labor standards and practices, which are set forth in Attachment I and incorporated herein by reference for all purposes, and which are to be made part of all future 100% Locally Funded City Public Works Construction Contracts; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Ordinance No. 60110, pass on January 17, 1985, is hereby amended to replace the 100 % Locally Funded City Public Works Construction Contract "General Conditions" document attached thereto with the new updated "General Conditions" document attached hereto and labled "Attachment I".

PASSED AND APPROVED THIS 29th day of March 1990.

Lila Cockrell
M A Y O R

ATTEST:

James J. Leary
City Clerk

APPROVED AS TO FORM:

Tom Farley
City Attorney

AN ORDINANCE 60110

REPEALING ORDINANCE NO. 49318 OF APRIL 27, 1978
AND REPLACING SAME WITH THIS ORDINANCE, AND
AUTHORIZING THE CITY MANAGER TO INSTRUCT THE
DIRECTOR OF PUBLIC WORKS TO INSERT NEW GENERAL
CONDITIONS GOVERNING WAGE AND LABOR STANDARDS AND
PRACTICES IN ALL FUTURE 100% LOCALLY FUNDED CITY
PUBLIC WORKS CONSTRUCTION CONTRACTS.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Ordinance No. 49318 of April 27, 1978 is hereby formally repealed.

SECTION 2. In accordance with Article 5159a, Revised Civil Statutes of Texas, as amended, the City Council hereby adopts the most current United States Department of Labor Wage Determination Decisions for Bexar County, Texas (wage determination decision in effect ten (10) days prior to bid opening) as periodically published in the Federal Register as the local general prevailing rate of per diem wages to be paid to various classifications of laborers, workmen, and mechanics employed in either building construction trades or heavy/highway construction trades in constructing 100% Locally Funded City Public Works Construction projects.

Furthermore, it is hereby the expressed intent of the City Council of the City of San Antonio to clearly establish the general prevailing rate of per diem wages to be a sum certain, in dollars and cents, for each of two distinct categories of wage being, "minimum hourly base pay" and "minimum hourly fringe benefit contribution." The contractor/subcontractor is strictly prohibited from paying the various classifications of laborers, workmen, and mechanics any amount less than the "minimum hourly base pay" and then adding the reduction in "minimum hourly base pay" to the "minimum hourly fringe benefit contribution" so as to "net" a combined total of the two intended, distinct categories of the wage in 100% Locally Funded City Public Works Construction contracts.

It is recognized by the City Council that certain job classifications are not entitled to receive any "minimum hourly fringe benefits" by virtue of adopting the United States Department of Labor Wage Determination Decisions for Bexar County, Texas and that result is the express intent of the City Council.

It is also the intent of the City Council to allow the contractor/subcontractor to pay various classifications of laborers, workmen, and mechanics the minimum hourly "cash equivalent" of the appropriate "minimum hourly fringe benefit contribution" listed in a wage determination decision in lieu of benefits contributed to a permissible fringe benefit plan.

SECTION 3. The City Manager is hereby directed to instruct the Director of Public Works to insert into all future 100% Locally Funded City Public Works construction contracts, new "General Conditions" (as set forth in Attachment I, which is incorporated herein by reference for all purposes) governing wage and labor standards and practices.

The City Manager, in consultation with the Director of Public Works, is hereby authorized by City Council to periodically amend such "General Conditions" administratively to reflect needed improvements in the document as required, ~~except that~~ only the City Council shall be authorized to amend legislative matters specifically addressing the prevailing rate of minimum per diem wages, holiday pay, etc.

PASSED AND APPROVED this 17th day of January, 1985.

Henry Asimov
M A Y O R

ATTEST: *Horma J. Rodriguez*
City Clerk

APPROVED AS TO FORM:

for Jon Finley
City Attorney

85-04

GENERAL CONDITIONS

WAGE AND LABOR STANDARD PROVISIONS-100% LOCALLY FUNDED CONSTRUCTION

Contents

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20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED
21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

1. GENERAL STATEMENT

This is a 100% locally funded Public Works Contract and Article 5159a, Revised Civil Statutes of Texas, as amended, requires that not less than the general prevailing wage rates (minimum hourly base pay and minimum hourly fringe benefit contribution) for work of similar character be paid to contractor and subcontractor employees. These wage rates are derived from the most current applicable federal prevailing wage rates as published by the United States Department of Labor, Dallas, Texas and authority of Ordinance No. 60110 as amended and passed by the City Council of the City of San Antonio. Copies of both the current Ordinance as amended and the wage rates are contained in the Special Conditions, and are included instruments of this contract and full compliance with same shall be required.

Any deviation from Wage and Labor Standard Provisions compliance may be cause for City's withholding either periodic interim or final payment to the contractor until such deviations are properly corrected.

2. WAGE & HOUR OFFICE, PUBLIC WORKS, RESPONSIBILITIES

The Wage & Hour Office, Public Works Department, City of San Antonio, is primarily responsible for all Wage and Labor Standard Provisions investigation and enforcement and will monitor contractor/subcontractor practices to assure the Director of Public Works that:

- a. Appropriate weekly compliance statements and payroll records are submitted to the City by the contractor/subcontractors and that such are reviewed for compliance with the Wage and Labor Standard Provisions.
- b. Apprentices/trainees working on the project are properly identified by the contractor/subcontractor on payroll records and documented as being included in programs currently sanctioned by appropriate federal or state regulatory agencies.
- c. Applicable Wage Determination Decisions, including any applicable modifications, and related statements are posted at the work-site by the contractor and that proper job classifications and commensurate minimum hourly base and fringe wage rates are paid.
- d. Employees are periodically interviewed (at random) on each project as required.
- e. That no person employed by contractor/subcontractor is induced against his will, by any means, to give up any part of the compensation to which he is otherwise entitled.
- f. That any and all periodic administrative directives to the Wage & Hour Office from the Director of Public Works are being implemented.

3. CLAIMS & DISPUTES PERTAINING TO WAGE RATES

Claims and disputes not promptly and routinely settled by the contractor/subcontractor and employee pertaining to wage rates, or to job classifications of labor employed upon the work covered by this contract, shall be reported by the employee in writing, within sixty (60) calendar days of employee's receipt of any allegedly incorrect classification, wage or benefit report, to the Wage & Hour Office, City of San Antonio for further investigation. Claims and disputes not reported by the employee to the City's Wage & Hour Office in writing within the sixty (60) calendar day period shall be deemed waived by the employee for the purposes of the City administering and enforcing the City's contract rights against the contractor on behalf of the employee. Waiver by the employee of this City intervention shall not constitute waiver by the City to independently pursue contractual rights it has against the contractor/subcontractor for breach of contract and other sanctions available to enforce the Wage and Labor Standard Provisions.

4. BREACH OF WAGE AND LABOR STANDARD PROVISIONS

The City of San Antonio reserves the right to terminate this contract for cause if the contractor/subcontractors shall knowingly and continuously breach, without timely restitution or cure, any of these governing Wage and Labor Standard Provisions. A knowing and unremedied proven violation of these Wage and Labor Standard Provisions may also be grounds for debarment of the contractor/subcontractor from future City of San Antonio contracts for lack of responsibility, as determined by the City of San Antonio. Recurrent violations, whether remedied or not, will be considered by the Director of Public Works when assessing the responsibility history of a potential contractor/subcontractor prior to competitive award of future Public Works projects. The general remedies stated in this paragraph 4. above, are not exhaustive and not cumulative for the City reserves legal and contractual rights to other specific remedies outlined herein below and in other parts of this contract and as are allowed by applicable City of San Antonio ordinances, state and federal statutes.

5. EMPLOYMENT OF LABORERS/MECHANICS NOT LISTED IN WAGE DETERMINATION DECISION

In the event that a contractor/subcontractor discovers that construction of a particular work element requires a certain employee classification and skill that is not listed in the wage determination decision contained in the original contract documents, contractor/subcontractors will make prompt inquiry (before bidding, if possible) to the Wage and Hour Office identifying that class of laborers/mechanics not listed in the wage determination decision who are intended to be employed, or who are being employed, under the contract. Using his best judgment and information resources available to him at the time, and any similar prior decisions, the Director of Public Works, City of San Antonio shall classify said laborers/mechanics by issuing a special local wage determination decision to the contractor/subcontractor which shall be enforced by the Wage and Hour Office.

6. MINIMUM WAGE

All laborers/mechanics employed to construct the work governed by this contract shall be paid not less than weekly the full amount of wages due (minimum hourly base pay and minimum hourly fringe benefit contribution for all hours worked, including overtime) for the immediately preceding pay period computed at wage and fringe rates not less than those contained in the wage determination decision included in this contract. Only payroll deductions as are mandated by state or federal law and those legal deductions previously approved in writing by the employee, or as are otherwise permitted by state or federal law, may be withheld by the contractor/subcontractor.

Should the contractor/subcontractor subscribe to fringe benefit programs for employees, such programs shall be fully approved by the City in adopting a previous U.S. Department of Labor decision on such fringe benefit programs or by applying DOL criteria in rendering a local decision on the adequacy of the fringe benefit programs. The approved programs shall be in place at the time of City contract execution and provisions thereof disclosed to the Wage and Hour Office, City of San Antonio, for legal review prior to project commencement.

Regular contractor/subcontractor contributions made to, or costs incurred for, approved fringe benefit plans, funds or other benefit programs that cover periods of time greater than the one week payroll period (e.g. monthly or quarterly, etc.) shall be prorated by the contractor/sub-contractor on weekly payroll records to reflect the equivalent value of the hourly and weekly summary of fringe benefits per employee.

7. OVERTIME COMPENSATION ON NON-FEDERALLY FUNDED PROJECTS

No contractor/subcontractor contracting for any part of the non-federally funded contract work (except for worksite related security guard services) which may require or involve the employment of laborers/mechanics shall require or permit any laborer/mechanic in any seven (7) calendar day work period in which he, she is employed on such work to work in excess of 40 hours in such work period unless said laborer/mechanic receives compensation at a rate not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of 40 hours in a seven (7) calendar day work period. Fringe benefits must be paid for straight time and overtime; however, fringe benefits are not included when computing the overtime rate.

8. PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS

The contractor/subcontractor is allowed to pay a minimum hourly cash equivalent of minimum hourly fringe benefits listed in the wage determination decision in lieu of the contribution of benefits to a permissible fringe benefit plan for all hours worked including overtime as described in paragraph 6. above. An employee is not allowed to receive less than the minimum hourly basic rate of pay specified in the wage determination decision.

9. WORK CONDUCTED ON HOLIDAYS-NON-FEDERALLY FUNDED PROJECTS

If a laborer/mechanic is employed in the normal course and scope of his or her work on the jobsite on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King Day or the calendar days observed as such in any given year, work performed shall be paid for at no less than one and one half (1 1/2) times the regular minimum hourly base pay regardless of the total number of hours the laborer/mechanic has accumulated during the pay period.

10. UNDERPAYMENT OF WAGES OR SALARIES

- a. When a "full investigation" (as called for in and as construed under Article 5159a, Sec. 2 and as further generally described in an administrative directive to the City's Wage & Hour Office from the City's Director of Public Works entitled "Conducting Wage and Labor Standards Investigations on 100% Locally Funded City Construction Projects," as may be amended) evidences underpayment of wages by contractor/sub-contractor to laborers/mechanics employed upon the work covered by this contract, the City of San Antonio, in addition to such other rights as may be afforded it under state and/or federal law and/or this contract, shall withhold from the contractor, out of any payments (interim progress and/or final) due the contractor, so much thereof as the City of San Antonio may consider necessary to secure ultimate payment by the appropriate party to such laborers/mechanics, of full wages required by this contract plus possible penalty (See b. below). The amount so withheld, excluding any possible penalty to be retained by City, may be disbursed at an appropriate time after "full investigation" by the City of San Antonio, for and on behalf of the contractor/subcontractor (as may be appropriate), to the respective laborers/mechanics to whom the same is due or on their behalf to fringe benefit plans, funds, or programs for any type of minimum fringe benefits prescribed in the applicable wage determination decision.
- b. Article 5159a, Revised Civil Statutes of Texas, as amended, states that the contractor shall forfeit as a penalty to the City of San Antonio the sum of sixty dollars (\$60.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic, who is paid less than the said stipulated rate for any work done under this contract, whether by the contractor himself or by any subcontractor working under him. Pursuant to and supplemental to this statutory authority, the City of San Antonio and the contractor/subcontractor contractually acknowledge and agree that said sixty dollar (\$60.00) statutory penalty shall be construed by and between the City of San Antonio and the contractor/subcontractor as liquidated damages and will apply to any violations of paragraphs 6, 7, or 9 herein, resulting from contractor/subcontractor underpayment violations.
- c. If unpaid or underpaid workers cannot be located by the Contractor or the City after diligent efforts to accomplish same, unpaid or underpaid wages shall be reserved by the City in a special "unfound worker's account" established by the City of San Antonio, for such

employees. If after one (1) year from the final acceptance of the project by the City, workers still cannot be located, in order that the City can make effective interim re-use of the money, such wages and any associated liquidated damages may be used to defray actual costs incurred by the City in attempting to locate said workers and any remaining monies may then revert back to the City's original funding source for the project. However, unpaid or underpaid workers for which money was originally reserved are eligible to claim recovery from the City for a period of not-to-exceed three (3) years from the final acceptance of the project by the City. Recovery after expiration of the three year period is prohibited.

11. DISPLAYING WAGE DETERMINATION DECISIONS/AND NOTICE TO LABORERS/MECHANICS STATEMENT

The applicable wage determination decision as described in the "General Statement" (and as specifically included in each project contract), outlining the various worker classifications and mandatory minimum wages and minimum hourly fringe benefit deductions, if any, of laborers/mechanics employed and to be employed upon the work covered by this contract, shall be displayed by the contractor/subcontractor at the site of work in a conspicuous and prominent public place readily and routinely accessible to workmen for the duration of the project. In addition, the contractor/subcontractor agrees with the contents of the following statement, and shall display same, in English and Spanish, near the display of the wage determination decision:

NOTICE TO LABORERS/MECHANICS

Both the City of San Antonio and the contractor/subcontractor agree that you must be compensated with not less than the minimum hourly base pay and minimum hourly fringe benefit contribution in accordance with the wage rates publicly posted at this jobsite and as are applicable to the classification of work you perform.

Additionally, you must be paid not less than one and one-half times your basic hourly rate of pay for any hours worked over 40 in any seven (7) calendar day work period, and for any work conducted on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and Martin Luther King Day or the calendar days observed as such in any given year.

Apprentice and trainee hourly wage rates and ratios apply only to apprentices and trainees recognized under approved Federal, or State, apprenticeship training programs registered with the Bureau of Apprenticeship and Training, U.S. Dept. of Labor.

If you believe that your employer is not paying the posted minimum wage for the type of work you do, you must make direct inquiry to the employer and inquire in writing, within sixty (60) calendar days of your receipt of any allegedly incorrect wage or benefit check or report, to the City of San Antonio Wage & Hour Office, Public Works Division, P.O. Box 839966, San Antonio, Texas 78283-3966. It is mandatory that you

promptly file written inquiry of any allegedly incorrect wage or benefit checks or reports with the City of San Antonio, Wage & Hour Office within the sixty (60) calendar day period so that you do not waive your potential right of recovery under the provisions of the City of San Antonio Public Works contract that governs this project.

Both the City of San Antonio and the contractor/subcontractor agree that no laborer/mechanic who files a complaint or inquiry concerning alleged underpayment of wages or benefits shall be discharged by the employer or in any other manner be discriminated against by the employer for filing such complaint or inquiry.

12. PAYROLLS & BASIC PAYROLL RECORDS

- a. The contractor and each subcontractor shall prepare payroll reports in accordance with the "General Guideline" instructions furnished by the Wage & Hour Office of the City of San Antonio. Such payroll submittals shall contain the name and address of each such employee, his correct labor classification, rate of pay, daily and weekly number of hours worked, any deductions made, and actual basic hourly and fringe benefits paid. The contractor shall submit payroll records each week, and no later than seven (7) working days following completion of the workweek being processed, to the Wage & Hour Office, City of San Antonio. These payroll records shall include certified copies of all payrolls of the contractor and of his subcontractors, it being understood that the contractor shall be responsible for the submission and general mathematical accuracy of payrolls from all his subcontractors. Each such payroll submittal shall be on forms deemed satisfactory to the City's Wage & Hour Office and shall contain a "Weekly Statement of Compliance", as called for by the contract documents. Such payrolls will be forwarded to Public Works, Wage & Hour Office, City of San Antonio, P. O. Box 839966, San Antonio, Texas 78283-3966.
- b. Copies of payroll submittals and basic supporting payroll records of the contractor/subcontractors accounting for all laborers/mechanics employed under the work covered by this contract shall be maintained during the course of the work and preserved for a period of three (3) years after completion of the project. The contractors/subcontractors shall maintain records which demonstrate: any contractor commitment to provide fringe benefits to employees as may be mandated by the applicable wage determination decision, that the plan or program is adjudged financially responsible by the appropriate approving authority, (i.e. U. S. Department of Labor, U. S. Department of Treasury, etc.), and that the provisions, policies, certificates, and description of benefits of the plan or program as may be periodically amended, have been clearly communicated in a timely manner and in writing, to the laborers/mechanics affected prior to their performing work on the project.

- c. The contractor/subcontractor shall make the above records available for inspection, copying, or transcribing by authorized representatives of the City of San Antonio at reasonable times and locations for purposes of monitoring compliance with this contract.

13. LABOR DISPUTES

The contractor/subcontractor shall immediately notify the Director of Public Works or his designated representative of any actual or impending contractor/subcontractor labor dispute which may affect, or is affecting, the schedule of the contractor's, or any other contractor's/subcontractor's work. In addition, the contractor/subcontractor shall consider all appropriate measures to eliminate or minimize the effect of such labor disputes on the schedule, including but not limited to such measures as: promptly seeking injunctive relief if appropriate; seeking appropriate legal or equitable actions or remedies; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; and any other measures that may be appropriately utilized to mitigate or eliminate the jobsite and scheduling effects of the labor dispute.

14. COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES

No laborers/mechanics to whom the wage, salary, or other labor standard provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor/subcontractors because such employee has filed any formal inquiry or complaint or instituted, or caused to be instituted, any legal or equitable proceeding or has testified, or is about to testify, in any such proceeding under or relating to the wage and labor standards applicable under this contract.

15. EMPLOYEE INTERVIEWS TO ASSURE WAGE AND LABOR STANDARD COMPLIANCE

Contractor/subcontractors shall allow expeditious jobsite entry of City of San Antonio Wage & Hour representatives displaying and presenting proper identification credentials to the jobsite superintendent or his representative. While on the jobsite, the Wage & Hour representatives shall observe all jobsite rules and regulations concerning safety, internal security and fire prevention. Contractor/subcontractors shall allow project employees to be separately and confidentially interviewed at random for a reasonable duration by the Wage & Hour representatives to facilitate compliance determinations regarding adherence by the contractor/subcontractor to these Wage and Labor Standard Provisions.

16. "ANTI-KICKBACK" PROVISION

No person employed in the construction or repair of any City of San Antonio public work shall be induced, by any means, to give up to any contractor/subcontractor or public official or employee any part of the hourly and/or fringe benefit compensation to which he is otherwise entitled.

17. "FALSE OR DECEPTIVE INFORMATION" PROVISION

Any person employed by the contractor/subcontractor in the construction or repair of any City of San Antonio public work, who is proven to have knowingly and willfully falsified, concealed or covered up by any deceptive trick, scheme, or device a material fact, or made any false, fictitious or fraudulent statement or representation, or made or used any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be permanently removed from the jobsite by contractor/subcontractor. The City of San Antonio reserves the right to terminate this contract for cause as a result of serious and uncured violations of this provision.

18. EMPLOYMENT OF APPRENTICES/TRAINEES

- a. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship & Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship & Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor/subcontractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in (b) below or is not registered or otherwise employed as stated above, shall be paid the wage rate for the classification of work he actually performs. The contractor/subcontractor is required to furnish to the Wage & Hour Office of the City of San Antonio, a copy of the certification, along with the payroll record that the employee is first listed on. The wage rate paid apprentices shall be not less than the specified rate in the registered program for the apprentice's level of progress expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination decision.
- b. Trainees will be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to an individually registered program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress. Any employee listed on the payroll at a trainee wage rate who is not registered and participating in a training plan approved

by the Employment and Training Administration shall be paid not less than the wage rate determined by the classification of work he actually performs. The contractor/subcontractor is required to furnish a copy of the trainee program certification, registration of employee-trainees, ratios and wage rates prescribed in the program, along with the payroll record that the employee is first listed on, to the Wage & Hour Office of the City of San Antonio. In the event the Employment and Training Administration withdraws approval of a training program, the contractor/subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved by the Employment and Training Administration.

- c. Paragraphs 15.a. and b. above shall not operate to exclude training programs approved by the OFCCP, United States Department of Labor and as adopted by the Associated General Contractors (AGC) of Texas, Highway, Heavy, Utilities and Industrial Branch. Guidelines for these training programs shall be the same as those established for federally funded projects. This sub-paragraph 15.c. shall not apply to those portions of a project deemed to be building construction.

d. RATIOS, APPRENTICE TO JOURNEYMAN:

The Ratio of Apprentice to Journeyman for this project shall be the same as the Ratio permitted under the plan approved by the Employment and Training Administration, Bureau of Apprenticeship and Training, U.S. Department of Labor, by Craft. A copy of the allowable Ratios is included with the applicable Wage Determination Decision in the specifications for this project.

When a "full investigation" (as called for in, and as construed under, Article 5159a, Sec. 2, and as further generally described in an administrative directive to the City's Wage & Hour Office from the City's Director of Public Works entitled "Conducting Wage and Labor Standards Investigations on 100% Locally Funded City Construction Projects", as may be amended) evidences a violation of the Apprentice or Trainee to Journeyman ratios effective for contractor/sub-contractor employees working on this contract, the City of San Antonio, in addition to such other rights as may be afforded it under state and/or federal law and/or other sections of this contract (especially paragraph 10 underpayment of wages), shall withhold from the contractor, out of any payments (interim progress and/or final) due the contractor, the liquidated damages sum of seventy-five dollars (\$75.00) for each calendar day, or portion thereof, for each certified Apprentice or Trainee employee assigned to a Journeyman that exceeds the maximum allowable Apprentice/Trainee to Journeyman ratio stipulated for any work done under this contract, whether by the contractor himself or by any subcontractor working under him.

19. JOBSITE CONDITIONS

Contractors/subcontractors will not allow any person employed for the project to work in surroundings or under construction conditions which are unsanitary, unhealthy, hazardous, or dangerous as governed by industry standards and appropriate local, state and federal statutes, ordinances, and regulatory guidelines.

20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

- a. The contractor/subcontractor shall knowingly only employ persons of appropriate ages commensurate with the degree of required skill, strength, maturity and judgment associated with the activity to be engaged in, but not less than the age of fourteen (14) years, as governed by Vernon's Annotated Texas Statutes, especially Article 5181.1 "Child Labor" (as may be amended), and Texas Department of Labor and Standards rulings and interpretations associated with that statute. It is hereby noted that in some circumstances generally governed by this section, a federal statute (see: Fair Labor Standards Act, 29 USCS Section 212; Volume 6A of the Bureau of National Affairs Wage Hour Manual at Paragraph 96:1; "Child Labor Requirements in Nonagricultural Occupations" WH Publication 1330, July 1978 as may be amended), could pre-empt the Texas Statute and therefore be the controlling law on this subject. The contractor/subcontractor should seek clarification from state and federal agencies and legal counsel when hiring adolescent employees for particular job classifications.
- b. Prohibited persons not to be employed are also those persons who, at the time of employment for this contract, are serving sentence in a penal or correctional institution except that prior approval by the Director of Public Works is required to employ any person participating in a supervised work release or furlough program that is sanctioned by appropriate state or federal correctional agencies.
- c. The Contractor/subcontractors shall be responsible for compliance with the provisions of the "Immigration Reform and Control Act of 1986" Public Law 99-603, and any related State enabling or implementing statutes, especially as they in combination apply to the unlawful employment of aliens and unfair immigration-related employment practices affecting this contract.

21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

The contractor shall cause these Wage and Labor Standard Provisions, or reasonably similar contextual adaptations hereof, and any other appropriate state and federal labor provisions, to be inserted in all subcontracts relative to the work to bind subcontractors to the same Wage and Labor Standards as contained in these terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors or sub-subcontractors and to give the contractor similar, if not greater, general contractual authority over the subcontractor or subcontractors as the City of San Antonio may exercise over the contractor.

GENERAL DECISION: **TX20030043** 02/25/2005 TX43

Date: February 25, 2005

General Decision Number: **TX20030043** 02/25/2005

Superseded General Decision Number: TX020043

State: Texas

Construction Types: Heavy and Highway

Counties: Bell, Bexar, Brazos, Comal, Coryell, Guadalupe, Hays, McLennan, Travis and Williamson Counties in Texas.

Heavy (excluding tunnels and dams) and Highway Construction Projects (does not include building structures in rest area projects). *NOT TO BE USED FOR WORK ON SEWAGE OR WATER TREATMENT PLANTS OR LIFT/PUMP STATIONS IN BELL, CORYELL, McLENNAN AND WILLIAMSON COUNTIES.

Modification Number	Publication Date
0	06/13/2003
1	01/14/2005
2	02/18/2005
3	02/25/2005

Effective date March 10, 2005

SUTX2005-001 01/03/2005

	Rates	Fringes
Air Tool Operator.....	\$ 16.00	0.00
Asphalt Distributor Operator...	\$ 12.09	0.00
Asphalt paving machine operator	\$ 11.82	0.00
Asphalt Raker.....	\$ 9.96	0.00
Asphalt Shoveler.....	\$ 10.56	0.00
Broom or Sweeper Operator.....	\$ 9.74	0.00
Bulldozer operator.....	\$ 11.04	0.00
Carpenter.....	\$ 12.25	0.00
Concrete Finisher, Paving.....	\$ 10.53	0.00
Concrete Finisher, Structures..	\$ 10.95	0.00
Concrete Paving Curbing		
Machine Operator.....	\$ 14.00	0.00
Concrete Paving Finishing		
Machine Operator.....	\$ 12.00	0.00
Concrete Rubber.....	\$ 10.88	0.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator.....	\$ 13.66	0.00
Electrician.....	\$ 24.11	0.00
Flagger.....	\$ 9.49	0.00
Form Builder/Setter, Structures	\$ 10.88	0.00
Form Setter, Paving & Curb.....	\$ 9.89	0.00
Foundation Drill Operator, Truck Mounted.....	\$ 15.00	0.00
Front End Loader Operator.....	\$ 11.36	0.00
Laborer, common.....	\$ 9.34	0.00
Laborer, Utility.....	\$ 10.12	0.00
Mechanic.....	\$ 14.74	0.00
Mixer operator, Concrete Paving	\$ 15.25	0.00
Mixer operator.....	\$ 10.83	0.00
Motor Grader Operator, Fine Grade.....	\$ 15.26	0.00
Motor Grader Operator, Rough...	\$ 12.96	0.00
Oiler.....	\$ 14.71	0.00
Painter, Structures.....	\$ 11.00	0.00
Pavement Marking Machine Operator.....	\$ 11.52	0.00
Pipelayer.....	\$ 10.49	0.00
Planer Operator.....	\$ 17.45	0.00
Reinforcing Steel Setter, Paving.....	\$ 15.50	0.00
Reinforcing Steel Setter, Structure.....	\$ 14.00	0.00
Roller Operator, Pneumatic, Self-Propelled.....	\$ 9.34	0.00
Roller Operator, Steel Wheel, Flat Wheel/Tamping.....	\$ 9.60	0.00
Roller Operator, Steel Wheel, Plant Mix Pavement.....	\$ 10.24	0.00
Scraper Operator.....	\$ 9.93	0.00
Servicer.....	\$ 11.41	0.00
Sign Installer (PGM).....	\$ 14.85	0.00

Slip Form Machine Operator.....	\$ 15.17	0.00
Spreader Box operator.....	\$ 10.39	0.00
Structural Steel Worker.....	\$ 13.41	0.00
Tractor operator, Crawler Type.	\$ 11.10	0.00
Traveling Mixer Operator.....	\$ 10.04	0.00
Trenching machine operator, Heavy.....	\$ 14.22	0.00
Truck Driver Tandem Axle Semi- Trailer.....	\$ 10.95	0.00
Truck driver, lowboy-Float.....	\$ 15.30	0.00
Truck driver, Single Axle, Heavy.....	\$ 11.88	0.00
Truck driver, Single Axle, Light.....	\$ 9.98	0.00
Wagon Drill, Boring Machine, Post Hole Driller Operator.....	\$ 14.65	0.00
Welder.....	\$ 14.26	0.00
Work Zone Barricade Servicer...	\$ 11.15	0.00

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal

process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

GENERAL DECISION: TX20030022 TX22

Date: June 13, 2003

General Decision Number: TX20030022

Superseded General Decision No. TX020022

State: TEXAS

Construction Type:
RESIDENTIAL

County(ies):

BEXAR

COMAL

GUADALUPE

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family
homes and apartments up to and including 4 stories.)

Modification Number
0

Publication Date
06/13/2003

COUNTY(ies):

BEXAR

COMAL

GUADALUPE

SUTX4027A 05/01/1983

	Rates	Fringes
AIR CONDITIONING MECHANICS	6.60	
CARPENTERS	6.99	
CEMENT MASONS	7.46	
DRYWALL HANGERS	8.73	
ELECTRICIANS	9.66	
IRON WORKERS	5.67	
LABORERS	5.15	
PAINTERS (Including Drywall taping)	8.16	
PLUMBERS	7.70	
ROOFERS	5.74	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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WAGE DETERMINATION APPEALS PROCESS

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Administrative Review Board
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

EXHIBIT E

Form and Requirements of Contract Progress Payment Request



CITY OF SAN ANTONIO CPPR Form and Instructions

Prior to submitting an invoice to request reimbursement, the developer must submit to the TIF Unit:

- **All approved Master Development Plans (MDPs), recorded plats, City approved construction plans and Inspections**
- **Copies of the payment and performance bond in accordance with executed Development Agreement**
- **Proof of compliance of the Bidding Policies must accompany the invoices submitted to include, but is not limited to: Publication of request for proposals, list of bidders, rating of bidders, and reason for choosing bidder (*Please refer to City's policy on Bidding Requirements.*)**
- **Letters of acceptance from City departments or other agencies certifying the public infrastructure was constructed and accepted in accordance with all applicable rules, regulations and codes.**

When submitting an invoice for reimbursement, a summary page (refer to Sample Packet, page 2) must accompany all invoices to include related project name, invoice number, period covered by invoices and phase covered by invoices. Invoices must be submitted in the categories listed in the approved Final Finance Plan Sources and Uses page. The Sources and Uses page is broken down into phases and categories on a forecasted maximum allowable cost.

Each category should have their own separate summary page (refer to Sample Packet, page 2) itemizing invoices submitted in each appropriate category. The summary page will need to include maximum allowable cost, actual invoice amount, Plat or MDP number (if applicable) and method of payment. This maximum allowable cost is the forecasted amount that was projected for each category in the phase.

A receipt and/or a cancelled check must accompany each invoice to qualify for reimbursement. The invoice must refer to the related project. The dates and amount on invoices must coincide with receipt or cancelled checks. The invoice total must calculate correctly and tie to the summary page.

Each column is defined below: (refer to Sample Packet, page 2)

- **Column A** is the category from the Sources and Uses page for projected expenses
- **Column B** is the forecasted maximum allowable cost per the Final Finance Plan
- **Column C** is the actual developer's expense
- **Column D** is the amount of prior requests
- **Column E** is the balance column. The balance is the difference between the projected expenses and the actual developer's expenses. (The balance column will be used for internal tracking purposes only.)

*** All invoice Payments:**

- **Must Be Accompanied by Receipt or Cancelled Check**
- **Must Reference the Project**

*** Only those categories outlined in the approved Final Finance Plan are eligible expenses for reimbursement.**

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ		Period covered by this invoice: 12/02---8/03			
Invoice#: One (1)		Phase(s) covered by this invoice: Phases 1, 2, & 3			
Section	A Activity	B Maximum Allowable from Final Finance Plan	C Invoices Amount	D Prior Requests	E **Balance
1	Construction Management	44,200	40,624	0	3,576
2	Contingency	192,500	199,215	0	-6,715
3	Driveway Approach	20,000	22,972	0	-2,972
4	Engineering Survey	50,050	50,000	0	50
5	Formation Fees	150,150	200,000	0	-49,850
6	Gas	144,375	100,000	0	44,375
7	Green Belt/Green Space	26,950	21,000	0	5,950
8	Infrastructure Cost	61,600	60,000	0	1,600
9	Legal Fees	10,000	11,500	0	-1,500
10	Organizational Cost	20,800	35,000	0	-14,200
11	Official Traffic Control Device	15,000	10,000	0	5,000
12	Parking Facilities	30,000	28,250	0	1,750
13	Project Cost	86,163	86,100	0	63
14	Public Schools	10,000	11,000	0	-1,000
15	Recreational Park Area	105,942	105,940	0	2
16	Regional Storm Water Improvements	73,344	73,444	0	-100
17	Relocation Cost	40,747	55,474	0	-14,727
18	Sanitary Sewer	35,000	65,000	0	-30,000
19	Sidewalks	47,500	67,587	0	-20,087
20	Streetscape Planting	20,000	20,000	0	0
21	Street Lights	25,000	25,105	0	-105
22	Water	19,500	19,500	0	0
	TOTAL	1,286,321	1,365,211	0	-78,890

Financing Cost does not accrue interest

**The Balance Column is used for Tracking purposes only

All Invoice Payments:

Must Be Accompanied by Receipt or Cancelled Check

Must Reference the Project

The City of San Antonio recommends having a CPA and the Project Engineer certify invoices submitted by developers.

CERTIFICATION:	Signature of Certifying Financial Official	Signature of Certifying Engineer
I certify that to the best of my knowledge and belief the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.	Typed or printed Name and Title <u>John Doe, CPA</u>	Typed or printed Name & Title <u>John Smith, Engineer</u>
	DATE: _____	DATE: _____

Reimbursement for TIRZ Expenses

Project Name:		Period covered by this invoice:			
Invoice#:		Phase(s) covered by this invoice:			
Section	A Activity	B Maximum Allowable from Final Finance Plan	C Invoices Amount	D Prior Requests	E **Balance
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
TOTAL					

Financing Cost does not accrue interest

**The Balance Column is used for Tracking purposes only

All Invoice Payments:

Must Be Accompanied by Receipt or Cancelled Check

Must Reference the Project

The City of San Antonio recommends having a CPA and the Project Engineer certify invoices submitted by developers.

CERTIFICATION: I certify, that to the best of my knowledge and belief, the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.	Signature of Certifying Financial Official _____ Typed or printed Name and Title: _____ _____ Signature: _____ DATE: _____	Signature of Certifying Engineer _____ Typed or printed Name & Title: _____ _____ Signature: _____ DATE: _____
--	---	---

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ	Period covered by this invoice: 12/02---8/03
Invoice #: One (1)	Phase covered by this invoice: Phases 1,2, & 3

Section 1	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Site Work						
Dirt Movers Inc.	00451364		1520	10,000		Ck# 2140
Dirt Movers Inc.	145246		1555	22,000		Ck# 2141
Dirt Movers Inc.	783581		1600	2,500		Ck# 2142
Dirt Movers Inc.	891771		1680	1,124		Ck# 2142
Dirt Movers Inc.	157863146		1685	5,000		Ck# 2144
Total		44,200		40,624	3,576	

Reimbursement for TIRZ Expenses

Project Name:	Period covered by this invoice:
Invoice #:	Phase covered by this invoice:

Section 1	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Site Work						
Total						

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ	Period covered by this invoice: 12/02---8/03
Invoice #: One (1)	Phase covered by this invoice: Phases 1,2, & 3

Section 2 Streets & Approaches	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
NAD Contractors	00451364		2020	\$165,000		Ck# 2523
Total		\$192,500		\$165,000	\$27,500	

Reimbursement for TIRZ Expenses

Project Name:	Period covered by this invoice:
Invoice #:	Phase covered by this invoice:

Section 2 Streets & Approaches	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Total						

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name:	Period covered by this invoice:
NAD Residential TIRZ	12/02---8/03
Invoice #:	Phase covered by this invoice:
One (1)	Phases 1,2, & 3

Section 3 Parkway	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Fast City Contractors	3574216		123	\$10,000		Ck# 8989
			456	\$4,500		Ck# 8989
			789	\$5,500		Ck# 8989
Total		\$20,000		\$20,000	\$0.00	

Reimbursement for TIRZ Expenses

Project Name:	Period covered by this invoice:
NAD Residential TIRZ	12/02---8/03
Invoice #:	Phase covered by this invoice:
One (1)	Phases 1,2, & 3

Section 3 Parkway	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Total						